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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91204897
Party	Plaintiff John G. Marino
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Submission	Motion to Compel Discovery
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Date	02/25/2014
Attachments	Marino Further Motion to Compel.pdf(101690 bytes ) 082313 J Kelly.pdf(59936 bytes ) 082313 M Cowart.pdf(113828 bytes ) 082313 R Hajicek.pdf(109742 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**In the matter of trademark application Serial No. 85414343  
For the mark LAGUNA LAKES Published in the Official Gazette on  
February 28, 2012**

**Opposition No: 91204897**

**JOHN GERARD MARINO**

**v.**

**LAGUNA LAKES COMMUNITY ASSOCIATION, INC.**

**JOHN GERARD MARINO'S MOTION  
TO COMPEL EXPANSION OF QUESTIONING AT  
30(b)(6) DEPOSITION AND FOR EXTENSION OF TIME FOR  
DISCOVERY**

John Gerard Marino ("Marino"), by and through his undersigned counsel hereby moves this tribunal for an Order expanding the scope of questioning at the 30(b)(6) deposition in this matter and states as follows:

1. On February 3, 2014, this Court entered an Order compelling a further deposition of the corporate representative of Laguna Lakes Community Association, Inc. ("LLCA"). This tribunal ordered LLCA to produce another 30(b)(6) witness with knowledge of (1) applicant's first use of its subject marks; and (2) information regarding any transfer/assignments of the subject marks by Transeastern Homes or any TOUSA entity to applicant.

2. Based upon the additional depositions of LLCA taken of Jeff Kelly, Mary Ann Cowart, and Robert Allen Hajicek (copies of which are attached

hereto), Marino seeks the Tribunal to further Order that LLCA produce a 30(b)(6) representative with knowledge of the following areas:

- a. That LLCA was not the creator of the logo;
- b. That Transeastern Homes, LLC never transferred ownership of Logo or name to LLCA;
- c. That before filing name application LLCA knew that “Laguna Lakes” is a geographic location in California;
- d. That before filing name application LLCA knew that at least 2 others communities in USA have prior use of name, “Laguna Lakes;”
- e. Both applications were filed specifically to harm John Gerard Marino, A/K/A “Mr. Laguna Lakes” and not protect LLCA commerce.
- f. That LLCA does not and has never engaged in intrastate commerce;
- g. That False information was knowingly submitted on both Trademark applications;
- h. That Pertinent information was knowingly omitted on both Trademark applications

3. Marino believes that allowing these additional deposition areas will better allow this tribunal to resolve the issues between the parties at trial. Marino seeks an extension of the discovery cut-off in this matter to allow this tribunal to rule on this Motion prior to the scheduled deposition on March 3, 2014 so that only one more deposition is necessary.

WHEREFORE, Marino requests an Order expanding the scope of questioning at the 30(b)(6) deposition in this matter, for an extension of the discovery cut-off, and for any other relief this Tribunal deems just and proper.

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by electronic mail on this 25 day of February 2014 to: Donna M. Flammang, Esq., Brennan Manna & Diamond, P.L., 3301 Bonita Beach Road, Suite 100, Bonita Springs, FL 34134.

BEHREN LAW FIRM  
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By:/ Scott M. Behren/  
Scott M. Behren  
Fla. Bar 987786

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
Post Office Box 1451  
Alexandria, Virginia 22313-1451

JOHN G. MARINO,

vs.

OPPOSITION NO. 91204897  
OPPOSITION NO. 91204941

LAGUNA LAKES COMMUNITY ASSOCIATION, INC.,

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DEPOSITION OF:       JEFF KELLY

DATE TAKEN:           August 23, 2013

TIME:                 3:25 p.m. to 3:46 p.m.

LOCATION:              Von Ahn Associates, Inc.  
                      13241 University Drive  
                      Suite 104  
                      Fort Myers, Florida

BEHALF OF:            The Plaintiff

REPORTED BY:          Marianne E. Sayers, RPR, CRR,  
                      Court Reporter and Notary Public  
                      State of Florida

---

VON AHN ASSOCIATES, INC.  
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South Fort Myers \*   Naples \* Punta Gorda

1 APPEARANCES:

2

For the Plaintiff(s):

3

BEHREN LAW FIRM  
2893 Executive Park Drive  
Suite 110  
Weston, Florida 33331

6

By: Scott M. Behren, Esquire

7

For the Defendant(s):

8

BRENNAN, MANNA & DIAMOND  
3301 Bonita Beach Road  
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Bonita Springs, Florida 34134

10

11

By: Richard S. Annunziata, Esquire

12

For the Defendant(s): (Via Conference Phone)

13

BRENNAN, MANNA & DIAMOND  
75 East Market Street  
Akron, Ohio 44308

15

16

By: W. Scott Harders, Esquire  
Chad Rothschild, Esquire

17

ALSO PRESENT: John G. Marino

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## I N D E X

20

ATTORNEY	DIRECT	CROSS	REDIRECT	RECROSS
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MR. BEHREN	3			
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## E X H I B I T S

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25

(None)

1    Thereupon,

2                               JEFF KELLY,

3           a witness, called by counsel for Plaintiff, having  
4    been first duly sworn by the court reporter, was  
5    examined and testified as follows:

6                       THE WITNESS:   I do.

7                               DIRECT EXAMINATION

8   BY MR. BEHREN:

9           Q       State your name, please.

10          A       Jeff Kelly.

11          Q       Are you a resident of Laguna Lakes?

12          A       I am.

13          Q       Were you on the board of Laguna Lakes at  
14   some point in time?

15          A       I was.

16          Q       When, approximately?   From when to when?

17          A       2011, 2012.

18          Q       Just one year?

19          A       Two years.

20          Q       Two years.

21                   Do you know what this particular matter is  
22   about?

23          A       Regarding trademark.

24          Q       Okay.   Do you know what -- about what  
25   regarding trademark?

1           A        I don't know the specifics, no.

2           Q        Okay.  And have you ever had a deposition  
3 taken before?

4           A        No.

5           Q        All right.  I am going to ask you a bunch of  
6 questions.  Hopefully --

7           A        Sure.

8           Q        -- you'll give me answers.

9                    Try to, please, however, we speak one at a  
10 time, so the court reporter can type it all up and have  
11 a clear transcript.

12          A        Okay.

13          Q        All right?

14                   Please try to respond verbally, yes, no, I  
15 don't know.  The uh-huh, uh-uh, shaking and nodding of  
16 the head doesn't get transcribed well by the court  
17 reporter.

18          A        Okay.

19          Q        All right?  If you need a break at some  
20 point in time, you need a drink, or whatever, then we  
21 can -- I'm sure we can accommodate you.

22          A        Okay.

23          Q        Have you ever been convicted of a crime at  
24 all?

25          A        No.



1           Q       And how long have you been living in Laguna  
2 Lakes for?

3           A       Approximately since '05. About eight years.

4           Q       Okay. So, did you buy new construction  
5 there?

6           A       Yes.

7           Q       So, you actually bought your unit from  
8 Transeastern?

9           A       Correct.

10          Q       And are you familiar at all with the  
11 trademark applications that were going to be filed on  
12 behalf of Laguna Lakes for the name Laguna Lakes, as  
13 well as a certain logo, which appears here on top of  
14 Exhibit F?

15          A       In regards to what? Am I familiar with  
16 what?

17          Q       Are you familiar with the fact that there  
18 was applications filed for these particular trademarks?

19          A       By?

20          Q       By the Laguna Lakes Community Association.

21          A       Yes.

22          Q       Okay. Tell me what you know or recall about  
23 that particular issue.

24          A       It was voted on at a board meeting, and I  
25 voted for it.

1 Q Why?

2 A I felt it was the right thing to do.

3 Q Why?

4 A It seemed to be, in my opinion, that --  
5 should be the ownership of the community.

6 Q Okay. And what -- what made you believe  
7 that Laguna Lakes Community Association owned either the  
8 name or the logo?

9 A That they owned it?

10 Q Yeah.

11 A I never said they did own it. I just  
12 thought it was a good idea that we trademarked it.

13 Q So, you don't have any knowledge whether or  
14 not Laguna Lakes Community Association, Inc. was ever  
15 the owner of either the name or the logo?

16 A No.

17 Q Isn't it true that Transeastern would have  
18 been the owner of the name and the logo?

19 A I don't know that to be true one way or the  
20 other.

21 Q Okay. Do you know when it was that Laguna  
22 Lakes Community Association first started to use the  
23 name and logo?

24 A No.

25 Q Do you -- were you ever -- was Gerard Marino

1 ever discussed at these -- at the board meeting where it  
2 was the -- it was approved to apply for these  
3 trademarks?

4 A Probably.

5 Q Okay. What do you recall about discussions  
6 about Mr. Marino?

7 A About the signage being used.

8 Q What signage being used?

9 A For-sale signs being used.

10 Q Okay. What kind of for-sale signs? You  
11 mean like signs planted in the development, or outside  
12 the development, or what?

13 A Both, from what I can remember, yeah.

14 Q Okay. Was there some complaint about  
15 Mr. Marino using either the name Laguna Lakes or the  
16 logo? Do you recall that?

17 A There was discussion. Whether it was a  
18 complaint or not, I can't say it was a complaint, but  
19 yeah, there was discussion.

20 Q Okay. What do you recall about -- being  
21 discussed about that issue?

22 A That it should be approved by the board and  
23 the board should -- the board as an entity should have a  
24 right to the logo for the community.

25 Q Okay. But that was -- so, that was -- it

1 was your belief that the board should have a right to  
2 the logo, but do you -- did you have any legal opinions  
3 at all on whether or not you actually were entitled to  
4 the logo?

5 A Did I personally have any?

6 Q The board.

7 UNIDENTIFIED SPEAKER: Objection, to the  
8 extent you're asking for a legal opinion that he  
9 may have held.

10 BY MR. BEHREN:

11 Q Did it -- let me ask you, was the filing of  
12 a trademark, in particular these trademarks, was that  
13 discussed with Ms. Flammang at a board meeting?

14 A I don't remember whether it was or not.

15 Q Okay. Do you know how it was that  
16 Ms. Flammang wound up getting selected to file the  
17 trademark applications?

18 A No, I don't.

19 Q Do you ever recall, at a board meeting that  
20 the public was entitled to attend, there being a  
21 discussion between Ms. Flammang and the board members  
22 about the seriousness of filing a trademark?

23 A About the seriousness?

24 Q Yeah.

25 A No.

1           Q       Was there ever any discussion by  
2 Ms. Flammang with the board at a public meeting that in  
3 order to obtain the trademark -- to obtain these  
4 particular trademarks, that Laguna Lakes Community  
5 Association had to be the owners of the marks?

6           A       That they what?

7           Q       They had to be the owners of the things that  
8 they sought to be trademarked.

9           A       A discussion by Donna?

10          Q       Yeah.

11          A       Not that I recall, that -- I mean, whether  
12 it was Donna specifically or not, no, I don't.

13          Q       Was there ever any complaints by members of  
14 the association about Ms. Flammang's law firm and  
15 Ms. Flammang being used to prosecute these legal matters  
16 for the association?

17          A       Members of the association?

18          Q       Yes.

19          A       No.

20          Q       Were there ever members of the association  
21 who -- well, why, were there members of the board who  
22 complained about --

23          A       Oh, you mean members of the actual -- what I  
24 would call the association would be the actual board.  
25 The association -- you're talking association as far as

1 residents?

2 Q Homeowners, yeah.

3 A There was, yes.

4 Q What was -- what was discussed about that,  
5 that you recall?

6 A That one of the residents was questioning  
7 why they were selected, why her firm was selected.

8 Q Okay. What was the response on that, if you  
9 recall?

10 A I don't recall exactly what the response  
11 was.

12 Q As far as you know, when you were on the  
13 board, was Laguna Lakes involved in any interstate  
14 commerce at all?

15 UNIDENTIFIED SPEAKER: Objection.

16 Go ahead and answer, though, Jeff, if you  
17 know.

18 THE WITNESS: No, not that I --

19 MR. BEHREN: Well, just to clarify, I  
20 don't -- you don't represent this individual,  
21 correct?

22 UNIDENTIFIED SPEAKER: I can object on  
23 behalf -- on behalf of the board, but Mr. Tardiff  
24 is here -- or, excuse me, Mr. Kelly is here  
25 subject to your subpoena.

1                   MR. BEHREN: I understand, right. So,  
2           you -- like I said, you don't represent this  
3           gentleman.

4                   Let me ask you another question.

5 BY MR. BEHREN:

6           Q       Did you -- have you discussed -- since you  
7           left the board, have you discussed either this matter  
8           between Mr. Marino and the association at all with  
9           anybody?

10          A       I'm sure I have.

11          Q       You don't recall any discussions?

12          A       Not with anybody on the board, no.

13          Q       Okay. Once you got subpoenaed for this  
14       particular case, did you speak with anybody about this  
15       issue?

16          A       Yeah, I'm sure I did.

17          Q       Who did you speak with?

18          A       My wife, friends, neighbors.

19          Q       Okay.

20          A       Yeah.

21          Q       What was discussed?

22          A       Just that I got subpoenaed, and I have never  
23       been subpoenaed before, and I was going to go give a  
24       deposition, yeah.

25                   I have never personally spoke with Gerard, I

1 have never -- you know, so it was -- it was kind of --  
2 you know, kind of different. So, yeah, I speak about  
3 it, sure.

4 MR. MARINO: I don't even think we have ever  
5 formally met, have we?

6 THE WITNESS: We never have, no.

7 BY MR. BEHREN:

8 Q So, the -- so, I didn't remember, though,  
9 the answer to the question as far as whether or not --  
10 are you aware of Laguna Lakes Community Association  
11 being engaged in any interstate commerce at all? I  
12 don't remember if you answered that.

13 A I did, and I said no, I don't.

14 Q Do you have any -- do you have any knowledge  
15 at all about the association's website, like when it was  
16 formed and when it was first being -- when it was first  
17 started?

18 A (Shaking head negatively.)

19 Q Do you have any knowledge --

20 A No. Sorry, I need to -- you can't type --

21 Q Yeah.

22 A No.

23 Q Do you have any knowledge at all about  
24 LagunaLakes.com, the domain name?

25 A Knowledge as far as whether it exists?



1           Q       Who's -- whether it exists, who's using it,  
2   who's ever used it.

3           A       No.

4           Q       Do you have any knowledge at all as to who  
5   created the Laguna Lakes logo?

6           A       No.

7           Q       I'm sorry?

8           A       No.

9           Q       No.

10                   Do you have any knowledge about whether or  
11   not Transeastern had a Laguna Lakes website at some  
12   point in time?

13           A       No, I don't have any knowledge of that.

14                   MR. MARINO: Could you show him the original  
15   packet, the package, original exhibit, and just  
16   have him verify who's the logo was --

17                   (Off-the-record discussion.)

18   BY MR. BEHREN:

19           Q       Oh, let me ask you -- let me show you  
20   Exhibit G, which is a trademark application for the logo  
21   that was filed with the U.S. trademark office.

22           A       Okay.

23           Q       And let me show you Exhibit I, which is also  
24   a trademark application filed by the association  
25   actually just for the name Laguna Lakes.

1 A Okay.

2 Q Have you ever seen those before --

3 A No.

4 Q -- today?

5 A No.

6 Q Were you ever given those as a board member  
7 for review before the applications got filed with the  
8 trademark office?

9 A Not that I remember.

10 Q There's some information on those things  
11 that indicates that LagunaLakes.com was the website  
12 being used by the association. Do you -- that's not the  
13 case, correct?

14 A Can you repeat?

15 Q Do you know what the domain name is for the  
16 Laguna Lakes Community Association?

17 A No.

18 Q Okay.

19 A I mean, I don't -- I don't remember what it  
20 is, no.

21 Q You haven't been on it recently?

22 A It's saved in my favorites, so I don't have  
23 to, you know, plug it in. And no, I haven't been on it  
24 in, yeah, a long time.

25 Q And on both these applications, too, there

1 is an indication as to the claimed first use in -- of  
2 commerce of the name Laguna Lakes and the logo. Do you  
3 have any knowledge at all, personal knowledge at all, as  
4 to when the name or the logo were first used in commerce  
5 by Laguna Lakes Community Association?

6 A No.

7 Q Do you have any knowledge at all as to when  
8 the signs at the front of the development were first  
9 erected on the development?

10 A No.

11 Q The Laguna Lakes signs.

12 A No.

13 Q Were they there already when you moved in?

14 A Um --

15 Q Or do you remember?

16 A I can't say for -- but I would think -- I  
17 would think so, because when we moved in, the models  
18 were up, so I -- I think probably the -- I don't know  
19 for sure, so I'm not going to say yes, whether the signs  
20 were there or not.

21 Q I got you.

22 A Right.

23 Q And that -- so, that year -- and that was  
24 when again, you thought, 2005?

25 A We probably moved in in '05, yeah.

1           Q       Okay.  So, you're not sure, as of '05,  
2  whether the signs were up outside or not?

3           A       Hundred percent, no.

4           Q       Was the gate up at the time?

5           A       Which gate?

6           Q       The front gate, where the guards were and  
7  what have you.

8           A       The swing gate, or the -- I mean, there's  
9  two sets of gates.  There is an arm, and there is a  
10 swing.

11          Q       Which gates, if any, do you remember were up  
12 at the time when you moved in?

13          A       I believe the up-and-down gates have always  
14 been there, even when we had a guard, I believe.

15          Q       Uh-huh.

16                   Was there a guard there when you moved in?

17          A       Is "I believe so" allowed?

18          Q       I mean --

19          A       You know, you're asking --

20          Q       -- you either recall or you don't recall.

21          A       Okay, I --

22          Q       If you don't recall --

23          A       No, I don't recall.

24          Q       Okay.

25          A       Okay.

1 MR. MARINO: I got to talk to you outside.

2 (A brief recess was taken.)

3 BY MR. BEHREN:

4 Q Do you -- are you aware of any instances  
5 where anybody expressed any confusion that Gerard Marino  
6 was somehow working on behalf of the Laguna Lakes  
7 Community Association?

8 A That he was working on behalf?

9 Q Yeah, that he was somehow affiliated with  
10 the association.

11 A Not to my knowledge, no.

12 MR. MARINO: Did they know of anybody who  
13 thought there was any confusion?

14 BY MR. BEHREN:

15 Q Are you aware of anybody who thought that  
16 there was some confusion between the association and  
17 Mr. Marino?

18 A Not to my knowledge.

19 MR. MARINO: Was there --

20 MR. BEHREN: Write down the questions.

21 (Off-the-record discussion.)

22 BY MR. BEHREN:

23 Q Was there anybody at all who was confused  
24 that the -- that the association somehow worked for  
25 Gerard Marino?

1 UNIDENTIFIED SPEAKER: Objection.

2 THE WITNESS: I can't speak for anybody  
3 else.

4 MR. MARINO: That he knows, anybody ever  
5 express to him?

6 BY MR. BEHREN:

7 Q Did anybody ever tell you that they were  
8 somehow confused about the relationship between  
9 Mr. Marino and the association?

10 A No.

11 MR. BEHREN: That's it. We're done.

12 MR. MARINO: You, Jeff.

13 MR. BEHREN: Thank you.

14 (Off-the-record discussion.)

15 MR. BEHREN: You can either -- after the  
16 transcript gets typed up, you could either come  
17 back to the court reporter's office and read it,  
18 to make sure it was accurately transcribed --

19 THE WITNESS: Uh-huh.

20 MR. BEHREN: -- or you can waive that right,  
21 which means basically she'll type it up and you  
22 won't ever have to see the transcript again.

23 Or you can say you're going to read it, and  
24 then when she sends you the letter, if you decide  
25 I'm not going to bother reading it, I don't want

1           to be bothered after all, it will be deemed a  
2           waiver and then she'll just type it up. She gives  
3           you a certain period of time after it's ready for  
4           you to review it.

5                     THE WITNESS: Okay.

6                     MR. BEHREN: If you don't want to review it,  
7           then just let it go.

8                     THE WITNESS: I would like to review it.

9                     (Deposition concluded.)

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DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES

RE: Marino vs. Laguna Lakes

PAGE	LINE	CHANGE	REASON
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[illegible]

Under the penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true.

DATE	NAME
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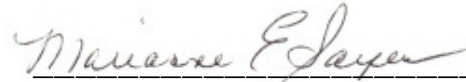


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CERTIFICATE OF OATH

I, Marianne E. Sayers, RPR, CRR, Notary Public,  
State of Florida at Large, certify that the witness JEFF  
KELLY personally appeared before me on August 23, 2013  
and was/were duly sworn.

(This certificate has been digitally signed.)



---

Marianne E. Sayers, RPR, CRR,  
Notary Public, State of Florida  
Commission DD942088  
Commission Expires 1/19/2014

1

2

## CERTIFICATE OF REPORTER

3

STATE OF FLORIDA)

4

COUNTY OF LEE)

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9

I, Marianne E. Sayers, RPR, CRR, do hereby certify that I was authorized to and did stenographically report the deposition of JEFF KELLY; that a review of the transcript was requested; and that the transcript is a true and complete record of my stenographic notes.

10

11

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14

I FURTHER CERTIFY that I am not a relative, employee, or attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

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DATED this 9th day of September, 2013.

(This certificate has been digitally signed.)

  
Marianne E. Sayers, RPR, CRR

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
Post Office Box 1451  
Alexandria, Virginia 22313-1451

JOHN G. MARINO,

vs.

OPPOSITION NO. 91204897  
OPPOSITION NO. 91204941

LAGUNA LAKES COMMUNITY ASSOCIATION, INC.,

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DEPOSITION OF: MARY ANN COWART  
DATE TAKEN: August 23, 2013  
TIME: 3:53 p.m. to 4:48 p.m.  
LOCATION: Von Ahn Associates, Inc.  
13241 University Drive  
Suite 104  
Fort Myers, Florida  
BEHALF OF: The Plaintiff  
REPORTED BY: Marianne E. Sayers, RPR, CRR,  
Court Reporter and Notary Public  
State of Florida

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VON AHN ASSOCIATES, INC.  
Registered Professional Reporters  
2271 McGregor Boulevard, Second Floor  
Fort Myers, Florida 33901  
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South Fort Myers \* Naples \* Punta Gorda

1 APPEARANCES:

2

For the Plaintiff(s):

3

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6

By: Scott M. Behren, Esquire

7

For the Defendant(s):

8

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10

11

By: Richard S. Annunziata, Esquire

12

For the Defendant(s): (Via Conference Phone)

13

BRENNAN, MANNA & DIAMOND  
75 East Market Street  
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14

15

By: W. Scott Harders, Esquire  
Chad Rothschild, Esquire

16

17

ALSO PRESENT: John G. Marino

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19

## I N D E X

20

ATTORNEY	DIRECT	CROSS	REDIRECT	RECROSS
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MR. BEHREN	3			
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## E X H I B I T S

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L	Photocopy of Business Cards	37
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1 Thereupon,

2 MARY ANN COWART,

3 a witness, called by counsel for Plaintiff, having  
4 been first duly sworn by the court reporter, was  
5 examined and testified as follows:

6 THE WITNESS: I do.

7 DIRECT EXAMINATION

8 BY MR. BEHREN:

9 Q Would you state your name.

10 A My name is Mary Ann Cowart.

11 Q Where do you live?

12 A I live at 9350 Los Alisos Way, Fort Myers,  
13 Florida, 33908.

14 Q Have you ever had a deposition taken before?

15 A Once.

16 Q When?

17 A I don't recall. Maybe about 20 years ago.

18 Q What was it related to?

19 A Personal injury.

20 Q You had a personal injury case?

21 A I did not.

22 Q Were you a defendant in a personal injury  
23 case?

24 A I was not.

25 Q Were you a witness in a personal injury

1 case?

2 A I -- I don't know how to answer that, but I  
3 can tell you what I did.

4 Q Okay.

5 A I was the property manager of a condo where  
6 the person got injured, and they called me in for a  
7 deposition.

8 Q And that was where, here in Florida?

9 A Yes.

10 Q And you live in Laguna Lakes?

11 A I do.

12 Q How long have you been there?

13 A Since approximately June of 2004.

14 Q So, you bought it when it was first built?

15 A I bought it at a priority position --

16 Q What does that mean?

17 A -- launch.

18 Q I'm sorry?

19 A I purchased the home at a priority position  
20 launch.

21 Q What's a priority position launch?

22 A It was a marketing ploy to get people to  
23 sign up to buy homes.

24 Q Who was that by?

25 A Transeastern.

1           Q       Do you know what Transeastern entity was  
2 marketing and having this priority position launch?

3           A       Excuse me?

4           Q       Do you know what Transeastern entity was  
5 doing this marketing and having this priority position  
6 launch?

7           A       Well, it would have been the Transeastern  
8 corporation, I'm of the opinion.

9           Q       Have you ever been arrested or convicted of  
10 a crime?

11          A       No, sir.

12          Q       Were you trying to avoid my process server  
13 from serving you with a subpoena?

14          A       No, sir.

15          Q       Why is it that nobody would come in -- come  
16 to the front door when your garage door was open and  
17 there were clearly people at home?

18          A       I don't know when you're talking about.

19          Q       A couple days before the process server  
20 served you with papers on your house.

21          A       I didn't know he was at the front door.

22          Q       Have you spoken with anybody at all about  
23 the fact that you were seeking to be deposed in this  
24 case?

25          A       No, sir.

1           Q       You haven't spoken with any other residents  
2 of the association or board members at all?

3           A       I spoke to Donna yesterday.

4           Q       Donna Flammang?

5           A       I did.

6           Q       What did you discuss with --

7           A       That --

8           Q       -- her --

9                   Hold on.

10                   What did you discuss with Donna Flammang  
11 yesterday?

12          A       That's --

13          Q       Go ahead.

14                   MR. ANNUNZIATA:  Scott, can you hear  
15 clearly?

16                   MR. HARDERS:  I would like her to speak up a  
17 little bit.

18                   MR. ANNUNZIATA:  Yeah.  I could -- the  
19 reason why I asked is that she's talking low, and  
20 I just didn't know if it was translating over into  
21 the phone.

22                   So, go ahead.  If you could just speak a  
23 little louder so Scott can hear you.  I will bring  
24 the phone closer to you.

25                   THE WITNESS:  The fact that --



1 MR. ANNUNZIATA: Are you there, Scott?

2 MR. HARDERS: Yep.

3 MR. ANNUNZIATA: All right.

4 MR. BEHREN: Go ahead.

5 MR. HARDERS: Can we just repeat the  
6 question, just so we are all on the same page?

7 MR. BEHREN: The question was what her and  
8 Donna Flammang discussed yesterday about this  
9 deposition.

10 MR. HARDERS: Okay.

11 THE WITNESS: That the -- I guess your guy  
12 left papers on my front door that I didn't even  
13 get until I went outside and saw it there, so I  
14 don't know when it was left, and that it had an  
15 exhibit referenced that wasn't attached.

16 BY MR. BEHREN:

17 Q Okay. What else?

18 A That's it.

19 Q What did you discuss about your deposition  
20 in this case or about this case with her?

21 A That I was going to come and answer your  
22 questions.

23 Q You were on the Laguna Lakes Community  
24 Association board?

25 A At one point, I was.

1 Q When?

2 A I don't know when. I haven't been on the  
3 board for a while, so I was -- I went off of it, I  
4 guess -- let me think about this. So, this is 2013.  
5 So, I went off of it this year, so I would have been on  
6 it the two previous years and maybe a month or two  
7 before that.

8 Q So, you went off this year. So, you went  
9 off in 2013?

10 A Yes.

11 Q So, you would have been on probably, you  
12 said when, two previous years? So, what, back to 2010  
13 or 2011?

14 A I -- I think I was like -- maybe went on in  
15 October or November of '09, if that means -- wait a  
16 minute. Wait a minute. Wait a minute.

17 Can I have a piece of paper, please, and a  
18 pen?

19 MR. ANNUNZIATA: Want me to hand her one?

20 MR. BEHREN: Sure.

21 THE WITNESS: Okay.

22 MR. ANNUNZIATA: There you go, and here is a  
23 pen.

24 THE WITNESS: This is 2013.

25 Okay. So, I think I potentially went on the

1 board in or around October or November of 2010. I  
2 was on the board all of 2011 and all of 2012.

3 Thank you.

4 BY MR. BEHREN:

5 Q Why did you leave the board?

6 A Why did I leave the board?

7 Q Yeah.

8 A A number of reasons. Time, mainly. I'm  
9 busy.

10 Q Okay. Why else?

11 A I am engaged. I'm in -- I mean, I had a lot  
12 on my plate this year, so I just -- it's mainly time,  
13 and the fact that I'm traveling a lot and going away  
14 again, and -- to France, and I'm having a wedding, and I  
15 have had people here, and I'm remodeling my house, and  
16 I'm busy at work and -- time.

17 MR. ANNUNZIATA: Off the record.

18 (Off-the-record discussion.)

19 MR. ANNUNZIATA: Back on the record.

20 BY MR. BEHREN:

21 Q Tell me what you -- let me show you what was  
22 previously marked as Exhibit F.

23 A I don't know what Exhibit F means.

24 Q Well, I'm showing you Exhibit F, so you'll  
25 know what it means.

1                   Take -- if you could take a look at Exhibit  
2 F there in front of you. That's Exhibit F.

3                   MR. ANNUNZIATA: Scott, he's showing her  
4 Exhibit F. Do you have a copy of it?

5                   MR. HARDERS: Yes, we do. Thank you.

6                   MR. ANNUNZIATA: Okay.

7                   THE WITNESS: Okay.

8 BY MR. BEHREN:

9           Q        You can keep that in front of you.

10          A        Okay, thank you.

11          Q        Do you recognize that document?

12          A        I -- I don't recognize it, but I -- this was  
13 typical of what we did in the board meetings, yes.

14          Q        Okay. So, you recall on that particular  
15 date was where you all voted to attempt to trademark  
16 Laguna Lakes and the logo?

17          A        I do remember it in a board meeting, that  
18 happening, yes.

19          Q        Why? Why were you trying to trademark  
20 Laguna Lakes and the logo?

21          A        Because Laguna Lakes is an association owned  
22 by the members of the association, and it was from the  
23 day that Transeastern developed it, and it should be  
24 trademarked.

25          Q        Okay. Why?

1           A        Because it's the right thing to do.

2           Q        Okay.  Why is that?

3           A        I am of the opinion that it is the right  
4 thing to do.

5           Q        Okay.  But why do you think it was the right  
6 thing to do?

7           A        I feel that it is the right thing to do.  I  
8 don't know that I have -- I'm not trying to give you a  
9 hard time.

10          Q        I'm just asking why you think it's the right  
11 thing --

12          A        I just feel like it's appropriate.

13                   MR. ANNUNZIATA:  Can you take a break for 30  
14 seconds?

15                   THE WITNESS:  Sure.

16                   MR. ANNUNZIATA:  Our witness is here.

17                   (Off-the-record discussion.)

18 BY MR. BEHREN:

19          Q        So, what prompted you to make the motion to  
20 trademark Laguna Lakes and the logo?

21          A        Because I felt that that was something that,  
22 as the board, we should do.

23          Q        Okay.  How was that -- how was that going to  
24 benefit the members of the association?

25          A        Because the trademark is the association.

1 It -- the mark is the association, it's what the  
2 association is, Laguna Lakes.

3 Q Well, the association is an organization  
4 that's intended to collect assessments from members and  
5 maintain the common areas, correct?

6 A I write a check to Laguna Lakes Community  
7 Association.

8 Q Okay. But you didn't try to trademark  
9 Laguna Lakes Community Association, you tried to  
10 trademark Laguna Lakes, right?

11 A Because Laguna Lakes is the subdivision in  
12 which I live.

13 Q Okay. Aren't there other Laguna Lakes?

14 A Not that I am aware of.

15 Q There's other Laguna Lakes in California,  
16 West Palm Beach; are you aware of that?

17 A Well, I know that -- no. I know that there  
18 is, like, a Laguna in California that I visited on a  
19 vacation one time, and --

20 Q Not the city, I'm talking about  
21 developments, Laguna Lakes developments. You're not  
22 aware that there's other Laguna Lakes developments out  
23 there?

24 A No.

25 Q Okay. Are you not aware -- are you aware

1 that there is actually bodies of water in California  
2 named Laguna Lakes?

3 A No.

4 Q Are you aware that -- now, you know that the  
5 parcels are all using the logo for Laguna Lakes, right,  
6 each of the parcel associations?

7 A I don't know that.

8 Q Okay. Aren't there logos on each of the  
9 parcel association signs?

10 A Probably, but I don't recall. You're asking  
11 me, I would have to go look.

12 Q Isn't it true that the reason why you wanted  
13 to have Laguna Lakes trademarked was to keep Gerard  
14 Marino from using the name and the logo in his  
15 advertising?

16 A Wow. That's pretty arrogant if Gerard  
17 Marino thinks that the only reason I wanted to have the  
18 logo trademarked -- no, that's not a true statement at  
19 all.

20 Q Okay. Isn't it true that you said something  
21 at the meeting about the fact that, and then Gerard  
22 can't use it anymore?

23 A I don't recall saying that.

24 Q Okay. So, if there is a couple people who  
25 are willing to give sworn statements to testify to the

1 fact that that's what you said, you wouldn't dispute it,  
2 would you?

3 A I would dispute it. I don't recall saying  
4 that.

5 Q You don't recall saying it, or you didn't  
6 say it? There is a difference, you know.

7 A I don't recall saying that.

8 Q So, you -- like I said, you don't recall  
9 saying it, so it's possible you did say it?

10 A No, you're twisting words.

11 Q Well, no. Like I said, there is a  
12 difference between I don't recall saying something and I  
13 didn't say something.

14 A Don't talk to me like that. We are not --  
15 you know what? You're being very disrespectful right  
16 now, and you're being aggressive with me. And I don't  
17 respond well with that. And you're going to make me cry  
18 if you keep talking to me in that tone.

19 Q I don't think I'm talking to you in any  
20 tone. I'm --

21 A Well, I think you do.

22 Q -- trying to get an answer to the question  
23 from you.

24 A I answered your question, sir.

25 Q Okay. So, you're saying you don't recall



1 it, so I'm trying to find out if it's possible that's  
2 something you said.

3 A It doesn't sound like something I would say.

4 Q But it's possible that's what you said?

5 A I'm not saying it's possible.

6 Q Did you want Gerard Marino to stop using the  
7 logo and the name?

8 A I don't want anyone to use the logo and the  
9 name other than the association.

10 Q What about the parcel associations, are they  
11 allowed to use the logo and the name?

12 A I never thought about it that deeply.

13 Q Who developed the logo and the name? Was it  
14 developed by Transeastern?

15 A As far as I know, it was, yes.

16 Q Okay. So, they were the owners of the logo  
17 and the name, correct?

18 A No. The community association was always  
19 the owner of the name.

20 Q What makes you say that?

21 A Because that's what I signed on my real  
22 estate contract.

23 Q On your real estate -- what did you sign on  
24 your real estate contract that says they are the owners  
25 of the name?

1           A        I was given -- as part of my real estate  
2 contract, I was given an attachment, an addendum --

3           Q        Uh-huh.

4           A        -- that included the condo docs. As part of  
5 Florida law, they are required to give that to me.

6           Q        There's declarations that --

7           A        Right.

8           Q        -- you had, right?

9           A        And the --

10          Q        The declarations don't say anything about  
11 who owned the name and the logo for Laguna Lakes, do  
12 they?

13          A        I think they do.

14          Q        Isn't it true that the declarations just  
15 talk about the associations being responsible for  
16 collecting assessments and maintaining the properties?

17          A        It says Laguna Lakes on there.

18          Q        Okay. But the question is, who owned Laguna  
19 Lakes? Did the association --

20          A        The members.

21          Q        -- own Laguna Lakes, or did Transeastern own  
22 Laguna Lakes?

23          A        The members owned Laguna Lakes. At the  
24 point where I signed up, I became an owner in Laguna  
25 Lakes.

1           Q       Isn't it true Transeastern owned Laguna  
2   Lakes and the logo, the name and the logo?

3           A       I disagree. I think that -- that  
4   Transeastern was the developer of the association, of  
5   the community.

6           Q       Aren't they the ones who marketed everything  
7   with all -- the logo all -- and the name all over  
8   everything?

9           A       Well, if you go buy a parcel of land, okay,  
10   what are you going to say? Oh, come buy from me right  
11   over here on this lot, A, B, C, D, and not have a name  
12   for it?

13          Q       Well, exactly. They are the ones who  
14   created the name and the logo for Laguna Lakes, correct?

15          A       That were for the members that bought in.  
16   So, the members owned, and still currently own, Laguna  
17   Lakes.

18          Q       Okay. And the question is, do you have some  
19   documentation you can show me that shows that the  
20   members of the association and the association own that  
21   name and logo?

22          A       I don't know.

23          Q       Okay. With regard to -- but you would agree  
24   at some point in time, Transeastern owned the name and  
25   logo, right?

1           A       No. I think that when people started  
2 buying, everyone owned the name and the logo.

3           Q       Okay. But you're just saying that based  
4 upon, I guess, speculation, right?

5           A       I don't believe I'm speculating.

6           Q       Well, like -- let me show you Exhibit J  
7 here, just like the -- the marketing materials. Do you  
8 recognize the marketing materials here from  
9 Transeastern?

10          A       I do.

11          Q       This is the kind of stuff you got, right?

12          A       I did.

13          Q       And it had the name and the logo all over it  
14 and Transeastern Homes, right?

15          A       As the builder.

16          Q       So, they are the ones who developed all this  
17 marketing materials and the logos and the name, right?

18          A       I suppose.

19          Q       And you have no personal knowledge of  
20 anything -- where they transferred this name and logo  
21 over to the association, do you?

22          A       Isn't that why we are dealing with this  
23 today?

24          Q       Well, I'm asking you, you don't have any  
25 personal knowledge of anything conveying ownership of

1 the name and the logo from Laguna Lakes -- I mean, from  
2 Transeastern to Laguna Lakes, correct?

3 A I believe that it was the intent of  
4 Transeastern to give the trademark name to the community  
5 association at the point that it was turned over.

6 Q Okay. But you don't have any documentation  
7 to evidence that, correct?

8 A I can look to see if I do.

9 Q Okay. Well, you're saying you think the  
10 declarations may say that, correct?

11 A I said I would be happy to look, to see if I  
12 have anything that would prove my point.

13 Q Okay. What would you look at?

14 A Whatever I might have, I don't know.

15 Q Well, what else do you have?

16 A I don't know what I have. I haven't looked  
17 at those papers in -- since 2003 probably.

18 Q Okay. Let me ask you a question. With  
19 regard to -- with regard to Exhibits G and I, these are  
20 the trademark applications that were submitted for the  
21 name and logo for Laguna Lakes.

22 A Okay. I have never seen these documents  
23 before. So, you want me to read these?

24 Q You have never seen either of them before?

25 A Not that I recall, no.

1 Q Okay. So, just to clarify then, when --  
2 would you agree that Ms. Flammang was hired to submit  
3 these applications for these trademarks?

4                      A                      Yes.

5 Q Okay. And why is it that Ms. Flammang was  
6 selected, when she was a member of the board?

7           A       Because we knew her.

8           Q       Okay. Did she ever discuss with you at  
9 public board meetings anything about this process and  
10 how it gets done and what you would have to prove in  
11 order to actually obtain these trademarks?

12           A       There was --

13 MR. ANNUNZIATA: Just --

14 THE WITNESS: I'm sorry?

15 UNIDENTIFIED SPEAKER: I'm going to object  
16 real quick here, just as a -- just as a point.  
17 The question is, was there any discussion at a  
18 public meeting. So, private conversations with  
19 the board and the attorney are -- are privileged,  
20 but any public discussions would not be  
21 privileged, and you can answer about the  
22 non-privileged aspect in a public setting, but not  
23 the -- not the privileged conversations that  
24 happened in private.

25 THE WITNESS: I don't even remember the

1 question.

2 MR. BEHREN: Can you read back the question  
3 for her, please?

4 MR. ANNUNZIATA: Do you understand the  
5 limitation that Scott just --

6 THE WITNESS: I think so.

7 MR. ANNUNZIATA: All right.

8 THE WITNESS: I need to hear what the  
9 question is, and then I will clarify.

10 MR. ANNUNZIATA: Okay.

11 (Portion of the record read back by the  
12 court reporter.)

13 THE WITNESS: So, I'm sorry, is it Scott on  
14 the phone?

15 MR. HARDERS: Yes, that's right.

16 THE WITNESS: Okay. So, I'm allowed to say  
17 what we would have discussed in a meeting  
18 publicly, but not what -- if -- if I even talked  
19 to her privately about it, correct?

20 MR. HARDERS: Not necessarily you and  
21 attorney Flammang privately, it's -- it's a  
22 private discussion of the board and the attorney.  
23 And so this is in your capacity as a board member.  
24 Any conversations with your attorney are  
25 privileged, and the association is asserting that

1           privilege, so we don't have to talk about those  
2           things. But if there was something in the public,  
3           at a public meeting, that dealt with some of those  
4           issues that were just raised in the question, you  
5           could share those, those conversations.

6                   THE WITNESS: I don't remember, plain and  
7           simple.

8 BY MR. BEHREN:

9           Q           So, you don't recall any discussions  
10          specifically with Ms. Flammang relating to these  
11          trademarks?

12          A           I don't remember where I was or when I was  
13          talking to her, I don't remember. I just don't  
14          remember.

15          Q           Okay. Do you -- do you know whether or not  
16          I -- the -- this LagunaLakes.com domain name, are you  
17          aware of whether or not the association ever used that  
18          domain --

19          A           I don't --

20          Q           -- LagunaLakes.com?

21          A           I don't know. I --

22          Q           Do you know -- go ahead.

23          A           I can look on my phone and see what it  
24          shows.

25          Q           Do you know whether or not the association



1 has ever used LagunaLakesAssociation.com?

2 A I know we have a website and I know that  
3 it's a favorite in my computer, but I don't recall -- I  
4 wouldn't know how to tell you to get there, without me  
5 going to my computer to see what the name of our website  
6 is.

7 Q Okay. Do you -- do you know when that  
8 website was first set up?

9 A Not specifically.

10 Q Was there -- at some point in time on the  
11 website, was there a public discussion forum?

12 A Yes.

13 Q Did you ever make negative comments about  
14 Mr. Marino on the public discussion forum?

15 A Not that I recall, but I know I definitely  
16 posted on there, but I don't remember what I posted.

17 Q Okay. Do you recall when that was  
18 actually -- when it was that that public discussion  
19 forum was up and when it was shut down?

20 A Not specifically, no.

21 Q Are you aware of any interstate commerce  
22 that the Laguna Lakes Association engages in?

23 UNIDENTIFIED SPEAKER: Objection.

24 But go ahead and answer, if you know, Mary

25 Ann.

1                   THE WITNESS: I don't know what interstate  
2                   commerce means.

3 BY MR. BEHREN:

4           Q       Are they selling anything, the association?  
5 Do you sell anything at all?

6           A       I think we are a nonprofit corporation.

7           Q       So, they are not selling anything, correct?

8           A       No.

9           Q       And you would agree that they're -- what  
10 they're -- what the association is doing really is local  
11 in nature? In other words, it's administering the  
12 Laguna Lakes development, right?

13          A       I'm sorry? Say that again.

14                   MR. BEHREN: Can you read back that  
15 question, please?

16                   (Portion of the record read back by the  
17 court reporter.)

18                   UNIDENTIFIED SPEAKER: We'll object to that,  
19 too, for the legal conclusion.

20                   But, again, go ahead and answer, if you  
21 know, Mary Ann.

22                   THE WITNESS: I don't know.

23 BY MR. BEHREN:

24          Q       Were you aware at all -- have you seen  
25 advertising of Mr. Marino's at all, postcards, websites,

1 or anything of that nature?

2 A Yes, he has mailed to my home before.

3 Q Okay. Do you know whether or not he was  
4 using the Laguna Lakes name or logo?

5 A Yes, I believe so.

6 Q And, by the way, you're a Realtor also,  
7 correct?

8 A I am.

9 Q And you -- would you consider -- are you a  
10 competitor of Mr. Marino's?

11 A I am not.

12 Q Why not?

13 A Why not?

14 Q Yeah.

15 A Because I don't sell Fort Myers.

16 Q Where do you sell?

17 A Captiva Island.

18 Q You didn't like Mr. Marino using the logo  
19 and the name for Laguna Lakes, did you?

20 A I don't think it's appropriate for anyone to  
21 use the logo, that -- anybody, not Joe the plumber, not  
22 Ed the electrician, or anyone else.

23 Q What about if he took a picture of the front  
24 gate of Laguna Lakes and put that out there?

25 A I don't think that's appropriate.

1           Q       So, a picture wouldn't be good -- wouldn't  
2 be okay either?

3           A       No.

4           Q       Do you ever put up pictures of the  
5 properties that you're selling on your advertising  
6 materials?

7           A       I work for the corporations that owns, and I  
8 have the permission to use everything that I use.

9           Q       So, you -- you actually, though -- you're  
10 like a captive agent? In other words, you work for a  
11 particular property and selling their units?

12          A       I do.

13          Q       What -- what -- what entity is that?

14          A       South Seas Island Resort on Captiva.

15          Q       Okay. So, you're selling units there, and  
16 get compensated based upon that? You're not trying to  
17 sell at different properties, correct?

18          A       Well, every great once in a while, like, a  
19 deal will kind of like fall in my lap for Sanibel.  
20 Like, this year a mergers and acquisitions attorney from  
21 Sullivan Cromwell referred a friend to me, and they  
22 bought a \$2.3 million house on Middle -- on West Gulf  
23 Drive that they never saw. So, no, I don't turn down  
24 that kind of business, but it has to be a referral to  
25 me, I don't go after it.

1           Q       So, you don't even really do advertising,  
2 then?

3           A       My advertising -- I was -- just been working  
4 on my budget, and my advertising last year, I spent less  
5 than \$4,000.

6           Q       Okay. So, Mr. Marino, though, is --  
7 actively advertises, correct?

8           A       I suppose. I don't know what Mr. Marino  
9 does in --

10          Q       Well, you said --

11          A       -- his business.

12          Q       -- you got a postcard.

13          A       I have gotten a postcard from him, but I  
14 don't know what he does for his real estate business.

15          Q       Do you know any of the domain names used by  
16 Mr. Marino at all for his business?

17          A       I do not.

18          Q       Are you aware of anybody at all expressing  
19 to you some confusion between Mr. Marino and the Laguna  
20 Lakes Community Association?

21          A       I have had people say things to me like that  
22 before, yes.

23          Q       Like what?

24          A       That they thought that Mr. Marino was an  
25 employee of Laguna Lakes or the Realtor inside the

1 clubhouse for Laguna Lakes.

2 Q Who told you that?

3 A Well, I have had people that ended up, you  
4 know, living in the community say that to me.

5 Q But you don't remember who?

6 A No, not specifically, but I know I have had  
7 conversations about it.

8 Q You can't -- you don't have any names of  
9 anybody who told you this?

10 A I'll think about it.

11 Q Do you know what a fiduciary -- you know  
12 what a fiduciary obligation is, correct?

13 A I do. I believe I do, yes.

14 Q Okay. Do you think you have a -- had a --  
15 have a -- had a fiduciary obligation to the members of  
16 the Laguna Lakes Community Association?

17 A I do.

18 Q Did you believe that you should have a --  
19 had full knowledge of what was involved in this  
20 trademark process and what was -- would have been  
21 required to seek this trademark before actually  
22 expending the monies on doing it?

23 A I believe that I was acting in the best  
24 interests of the association by hiring a professional,  
25 an attorney, like yourself, to trademark it.

1           Q       How much -- do you know how much money has  
2   been spent so far on trying to get these trademarks  
3   through --

4           A       I'm not --

5           Q       -- by the association?

6           A       I'm not on the board anymore, I don't know.

7           Q       Okay. How is it that the association is  
8   benefiting from spending all this money on these  
9   attempts to get these trademarks?

10           UNIDENTIFIED SPEAKER: Objection.

11           But go ahead and answer.

12           MR. BEHREN: I tell you, you can't instruct  
13   her not to answer anyway, because you don't  
14   represent her.

15           UNIDENTIFIED SPEAKER: Well, I can instruct  
16   her on relation to the -- to the board things. I  
17   was just trying to -- to allay any confusion if  
18   she thought an objection meant that she shouldn't  
19   answer. I was just encouraging her to go ahead  
20   and continue to answer your question.

21           MR. BEHREN: Okay.

22           THE WITNESS: Should I have an attorney?

23           MR. BEHREN: That's up to you. I can't -- I  
24   don't think either of us are going to give you  
25   legal advice here, because we don't represent you.

1           THE WITNESS: Well, you just made me feel  
2           uncomfortable that I don't have an attorney.

3           MR. BEHREN: I'm -- I'm just saying that I'm  
4           not going to give you legal advice whether you  
5           should get an attorney or not get an attorney, and  
6           I don't -- I would be surprised if the other  
7           lawyers here would give you legal advice if they  
8           don't represent you either. So, that's just the  
9           bottom line, I mean.

10           Can you read back the last question, please?

11           (Portion of the record read back by the  
12   court reporter.)

13           THE WITNESS: Well, once we win, we will  
14           benefit by owning our own trademark name.

15   BY MR. BEHREN:

16           Q       Okay. How will that benefit the  
17   association?

18           A       Because it protects the association.

19           Q       From what?

20           A       From anybody using the name.

21           Q       Okay. And how does that protect the  
22   association?

23           A       It just does. It protects the assets.

24           Q       Okay. Well, how is it that Mr. Marino, by  
25   using the association's name or logo, has damaged the



1 association?

2 A It's damaged the association because he  
3 doesn't work for the association.

4 Q Okay. So, again, though, how has it damaged  
5 the association? Did some --

6 A Because he is not an employee, but he's  
7 representing himself as being an employee of the  
8 association.

9 Q Do you have some documentation somewhere  
10 that reflects that he's representing himself as an  
11 employee of the association?

12 A Well, he's saying, you know, Laguna Lakes,  
13 blah, blah, blah, using the -- it looks like he works --  
14 that's what I do at my resort; okay? So, he's doing it  
15 without the permission of the association, which is -- I  
16 have permission to do what I do, but he doesn't have  
17 permission to do that.

18 Q Okay. But his advertising nowhere says that  
19 he's affiliated or an agent of the association, does it?

20 A It -- his advertising is so big with  
21 Transeastern that -- or with Laguna Lakes that it looks  
22 like he -- it looks like you would walk in the clubhouse  
23 and there he would be --

24 Q Okay.

25 A -- waiting for you to come in to tour.

1           Q       But he doesn't have anything in his  
2     documentation indicating that he's in any way affiliated  
3     with the association, does he?

4           A       Well, when you advertise -- when you  
5     advertise something -- if you go buy a car, okay, and  
6     you go buy a BMW, or a Hyundai, or a Volkswagen, that  
7     logo, you think -- you know, you can't put -- you can't  
8     put a logo for Hyundai on a BMW.

9           Q       A BMW has a trademark and they have actually  
10    been selling cars in worldwide commerce for years and  
11    years and years and years, right?

12          A       Well, I don't know how long BMW has been  
13    selling cars, but certainly since I have been driving.  
14    But it's the same for Laguna. We have been selling --  
15    they've -- you know, we don't sell homes, but we own the  
16    association.

17          Q       Isn't it true that allowing people such as  
18    Mr. Marino to sell homes in the association for the  
19    maximum value benefits all the association members?

20          A       Mr. Marino doesn't set the market.

21          Q       I'm sorry?

22          A       Mr. Marino doesn't set the market.

23          Q       What is that supposed to mean?

24          A       Mr. Marino doesn't have any control over the  
25    market.

1           Q       Okay. What I asked you is whether or not  
2 Mr. Marino, if he's able -- if he is selling, or any  
3 other Realtor is selling units in Laguna Lakes for the  
4 maximum value that they can get for their clients, isn't  
5 that a benefit to the whole association?

6           A       Well, that's a completely separate issue.  
7 And a Realtor doesn't set the market. The Realtor  
8 doesn't -- the Realtor doesn't set the market, the  
9 buyers and sellers set the market.

10          Q       Yeah. But the more that they can sell  
11 properties for in your association, it benefits all the  
12 association members, correct?

13          A       No, it doesn't benefit the entire  
14 association, it only benefits the homeowner of that  
15 particular property.

16          Q       Okay. Well, isn't it true that if there is  
17 high sale values on the houses in Laguna Lakes  
18 Association, it's going to benefit the other members of  
19 the association?

20                   UNIDENTIFIED SPEAKER: Objection. This is  
21 all pretty speculative.

22                   THE WITNESS: Very speculative.

23                   MR. BEHREN: Okay.

24                   THE WITNESS: I'm not --

25

1 BY MR. BEHREN:

2 Q So, what is -- do you have a card on you?

3 A I don't, actually. I will look, but I'm  
4 pretty sure I don't, because -- if you want a card from  
5 me, you'll have to come to my office to get one.

6 Q No, I wanted to see what it is that the --  
7 that the cards say, that you're indicating that your --  
8 your documentation somehow indicates that you're a, you  
9 know, captive agent.

10 A Well, I didn't say I was a hundred percent  
11 captive agent. I said that I'm pretty much a hundred  
12 percent -- I mean, I'm -- I'm probably 85 to 90 percent  
13 captive.

14 But I don't actually carry cards, believe it  
15 or not.

16 Oh, you got lucky.

17 Q All right, thank you.

18 Okay. So, yours specifically says on here,  
19 I guess, South Seas Sanibel and Captiva Properties Real  
20 Estate. So, that's the company that you work for, or is  
21 that -- or is that supposed to just be the type of --  
22 where you sell property? It says here South Seas  
23 Sanibel and Captiva Properties Real Estate. What's that  
24 refer to?

25 A South Seas Sanibel and Captiva Properties is

1 owned by Blackstone, and I work for South Seas Sanibel  
2 and Captiva Properties under Blackstone Real Estate  
3 Advisors.

4 Q Okay. And South Seas Island Resort, right?

5 A At South Seas Island Resort.

6 Q Okay. So, your card actually indicates that  
7 you work for a particular corporation?

8 A Yes.

9 Q Like if I worked for BMW and my card said  
10 BMW on it and Scott Behren, right?

11 A Yes.

12 Q Okay. Who is -- have you seen one of  
13 Mr. Marino's cards or advertisements? It doesn't say  
14 that he's working for Laguna Lakes, does it?

15 A It implies he works for Laguna Lakes.

16 Q Well, it actually shows, I believe, Ameri --  
17 well, it used to show Amerivest. What does it say on it  
18 now?

19 His card is actually showing Amerivest as  
20 the company he works for, correct?

21 A I have never seen Mr. Marino's card.

22 Q So, you don't know?

23 UNIDENTIFIED SPEAKER: Exhibits, are we  
24 marking these?

25 MR. BEHREN: Sure, we can mark them.

1 UNIDENTIFIED SPEAKER: Okay. I just -- I  
2 just can't see them.

3 MR. ANNUNZIATA: I would like to send him a  
4 photo of each of these, please.

5 MR. BEHREN: Mr. Marino's card actually  
6 says --

7 MR. ANNUNZIATA: Put them together for a  
8 moment. Hold on.

9 I'm going to send you -- right now you're  
10 going to have a copy of it, all right, which  
11 would --

12 UNIDENTIFIED SPEAKER: Okay. This will be  
13 Exhibits J and K maybe?

14 MR. ANNUNZIATA: One -- we can make it one  
15 exhibit.

16 UNIDENTIFIED SPEAKER: Oh, just one exhibit?  
17 That's fine.

18 MR. ANNUNZIATA: Okay. Look for it in about  
19 two seconds. Bear with me. Hang on.

20 UNIDENTIFIED SPEAKER: And Marianne, the  
21 reporter Marianne, what letter are we up to  
22 exhibit-wise?

23 (Off-the-record discussion.)

24 MR. BEHREN: We're on Exhibit L.

25

1                   (Deposition Exhibit L was marked for  
2   identification.)

3                   MR. ANNUNZIATA:  It's been sent to you,  
4           Scott and Chad.

5                   (Off-the-record discussion.)

6  BY MR. BEHREN:

7           Q        When you were -- when the board was  
8   discussing with Ms. Flammang at these meetings doing  
9   these trademarks, did she explain to you the process and  
10  what would have been required in order to obtain a  
11  trademark?

12                   UNIDENTIFIED SPEAKER:  Objection.  And it  
13   just -- I just want to point out, not the  
14   substance of the conversation, just was there an  
15   explanation given.

16                   Go ahead.

17                   THE WITNESS:  I just remember that we  
18   have -- had to -- that it had to be filed with --  
19   by an attorney, and -- I mean, I'm not an  
20   attorney, so you're asking me stuff --

21                   MR. BEHREN:  Well --

22                   THE WITNESS:  -- that I don't understand.

23  BY MR. BEHREN:

24           Q        Well, I'm asking you what was explained to  
25  you.

1                   Did she spend any time explaining any of  
2 this to you, as far as the process and what would have  
3 to be done in order to obtain these trademarks?

4           A           I don't recall if she did or she didn't.

5           Q           Do you recall whether or not the filing of  
6 the marks was addressed at one meeting or multiple  
7 meetings of the board?

8           A           I don't remember.

9           Q           Do you recall Ms. Flammang telling you that  
10 the association had to be the owner of the logo and the  
11 name in order to file a trademark?

12                   UNIDENTIFIED SPEAKER:  Objection.

13                   And, ma'am, actually, please don't answer  
14 this one.  That is directly attorney/client  
15 privilege.

16                   MR. BEHREN:  Well, no, it's not, to the  
17 extent that it was discussed at a board meeting  
18 that was public.

19                   UNIDENTIFIED SPEAKER:  Well, I don't think I  
20 heard that particular caveat in the question, but  
21 if -- if you could restate with that, I can let  
22 her answer.

23                   MR. BEHREN:  Okay.

24 BY MR. BEHREN:

25           Q           At any of the public board meetings, did



1 Ms. Flammang ever advise you that, in order to have --  
2 in order to file for a trademark on a logo or a name  
3 that you needed to be the owner of it?

4 A I just don't remember. I don't remember --  
5 I don't remember other than we were going to do it and  
6 that she was handling it. That's what I remember.

7 Q That's it? That's the extent of it?

8 A Yeah, because it's not something I  
9 understand.

10 Q Have there been -- do you recall any  
11 other -- other than any private board meetings you may  
12 have had with attorneys, do you recall any other  
13 discussions about this trade -- the trademark  
14 applications, or anything that Mr. Marino filed in  
15 opposition to it? Do you recall anything about those?

16 A No, not specifically.

17 Q Did -- do you recall at any public meeting  
18 there being any discussion about the fact that if the  
19 board -- if the association was able to obtain these  
20 trademarks, that they were going to have to defend them  
21 by stopping other developments around the United States  
22 from using the name?

23 A I don't remember. I don't remember anything  
24 along those lines.

25 Q Do you recall any discussions with

1 Ms. Flammang at any public meetings about any penalties  
2 if you misrepresent things in an application to the  
3 trademark office?

4 A (Shaking head negatively.)

5 MR. ANNUNZIATA: Can you repeat the  
6 question, please?

7 I'm sorry.

8 MR. BEHREN: She's shaking her head.

9 THE WITNESS: Yeah, I -- I -- I don't  
10 know -- I -- I -- I don't know what the question  
11 means, is why I'm shaking my head.

12 MR. ANNUNZIATA: No, no, I want to hear the  
13 question.

14 I'm sorry.

15 (Portion of the record read back by the  
16 court reporter.)

17 THE WITNESS: I didn't know it was possible  
18 to have some sort of a penalty with an application  
19 to the trademark office, so --

20 BY MR. BEHREN:

21 Q Okay. So, presumably, also, you weren't  
22 made aware that if you misrepresent things in a  
23 trademark application, that's potentially a criminal  
24 violation? You weren't made of -- aware of that, I  
25 assume, correct?

1           A       We're not doing anything criminal.

2           Q       That's not what I asked you. What I said is  
3 you -- apparently you weren't made aware then that if  
4 there's misrepresentations, material misrepresentations,  
5 made in a trademark application, that that can be the  
6 basis for criminal liability? You weren't aware of  
7 that, were you?

8           A       I'm not aware of that.

9                   MR. BEHREN: Okay. I don't have anything  
10 further.

11                  THE WITNESS: I'm done?

12                  MR. BEHREN: Uh-huh.

13                  THE WITNESS: Have a nice day.

14                  (Off-the-record discussion.)

15                  MR. BEHREN: Would you like to read?

16                  THE WITNESS: Read what?

17                  MR. BEHREN: Why am I not surprised by that  
18 answer?

19                  MR. ANNUNZIATA: That's a good answer,  
20 actually.

21                  THE WITNESS: What is it that you want me to  
22 read?

23                  MR. BEHREN: When she types up the  
24 transcript, she can send you a letter that gives  
25 you the opportunity to come and review the

1 transcript and make sure everything is accurate  
2 and truthful and taken down correctly, or you can  
3 waive that right and then when she types up the  
4 transcript, you won't -- she won't try to contact  
5 you to review it.

6 Or you can say, I'm going to read it, and  
7 then when she sends you the letter that it's --  
8 you now have a chance to review it, you can say, I  
9 don't want to review it, and then that will be the  
10 end of it.

11 THE WITNESS: Can I -- I think I want to  
12 call an attorney friend and find out what I should  
13 do.

14 MR. BEHREN: If I was you, then, just say  
15 you're going to read, and --

16 MR. ANNUNZIATA: Makes sense.

17 THE WITNESS: Okay.

18 MR. BEHREN: -- then you're not -- if at  
19 some --

20 THE WITNESS: Yeah, I would like to read,  
21 please.

22 MR. BEHREN: -- point in time you want to  
23 read, you could read.

24 THE WITNESS: I would like to read, please.

25 MR. BEHREN: Okay.

1                   MR. ANNUNZIATA:  If you waive it, it's done.  
2                   If you say you read, then you can read or waive it  
3                   later on.

4                   THE WITNESS:  Okay.

5                   MR. ANNUNZIATA:  So, you want to read.

6                   THE WITNESS:  Uh-huh.

7                   (Deposition concluded.)

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DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES

RE: Marino vs. Laguna Lakes

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Under the penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true.

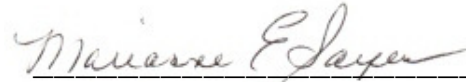
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CERTIFICATE OF OATH

I, Marianne E. Sayers, RPR, CRR, Notary Public,  
State of Florida at Large, certify that the witness MARY  
ANN COWART personally appeared before me on August 23,  
2013 and was/were duly sworn.

(This certificate has been digitally signed.)



---

Marianne E. Sayers, RPR, CRR,  
Notary Public, State of Florida  
Commission DD942088  
Commission Expires 1/19/2014

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)

COUNTY OF LEE)

I, Marianne E. Sayers, RPR, CRR, do hereby certify that I was authorized to and did stenographically report the deposition of MARY ANN COWART; that a review of the transcript was requested; and that the transcript is a true and complete record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, or attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 9th day of September, 2013.  
(This certificate has been digitally signed.)

  
Marianne E. Sayers, RPR, CRR



UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
Post Office Box 1451  
Alexandria, Virginia 22313-1451

JOHN G. MARINO,

vs.

OPPOSITION NO. 91204897  
OPPOSITION NO. 91204941

LAGUNA LAKES COMMUNITY ASSOCIATION, INC.,

---

DEPOSITION OF: ROBERT ALLEN HAJICEK  
DATE TAKEN: August 23, 2013  
TIME: 4:52 p.m. to 5:39 p.m.  
LOCATION: Von Ahn Associates, Inc.  
13241 University Drive  
Suite 104  
Fort Myers, Florida  
BEHALF OF: The Plaintiff  
REPORTED BY: Marianne E. Sayers, RPR, CRR,  
Court Reporter and Notary Public  
State of Florida

---

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South Fort Myers \* Naples \* Punta Gorda

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By: Richard S. Annunziata, Esquire

12

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14

15

By: W. Scott Harders, Esquire  
Chad Rothschild, Esquire

16

17

ALSO PRESENT: John G. Marino

18

19

## I N D E X

20

ATTORNEY	DIRECT	CROSS	REDIRECT	RECROSS
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MR. BEHREN	3			
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## E X H I B I T S

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NUMBER	DESCRIPTION	PAGE MARKED
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25

(None)

1    Thereupon,

2                               ROBERT ALLEN HAJICEK,

3           a witness, called by counsel for Plaintiff, having  
4   been first duly sworn by the court reporter, was  
5   examined and testified as follows:

6                       THE WITNESS:   I do.

7                               DIRECT EXAMINATION

8

9

10                               (Witness sworn.)

11                       THE WITNESS:   I do.

12   BY MR. BEHREN:

13           Q       Please state your name.

14           A       Robert Allen Hajicek.

15           Q       Can you spell it, please, for the reporter?

16           A       R-O-B-E-R-T; Allen, A-L-L-E-N; Hajicek,  
17   H-A-J-I-C-E-K.

18           Q       Have you ever had a deposition taken before?

19           A       No, I haven't.

20           Q       Have you ever been convicted of a crime?

21           A       No.

22           Q       And you live in Laguna Lakes?

23           A       Yes, I do.

24           Q       And how long have you resided there for?

25           A       We bought our condominium in March of 2005,

1 it was rented for five years, and we moved from Illinois  
2 in July of 2010.

3 Q You moved to Illinois?

4 A Moved from Illinois to Laguna Lakes in 2010.

5 Q So, you bought it 2005, but you didn't live  
6 there until 2010?

7 A That's right.

8 Q Why is that?

9 A Why is what?

10 Q Why did you buy the house and not live there  
11 for five years?

12 A Because we intended to live there at some  
13 point that we could.

14 Q And you bought it as new construction?

15 A Yes.

16 Q From who?

17 A From Transeastern.

18 Q And you were on the board of Laguna Lakes?

19 A Yes.

20 Q Are you still on the board?

21 A Yes.

22 Q How long you been on the board for?

23 A Since 2011, January.

24 Q Have you spoken with anybody about the fact  
25 that you were giving a deposition here today?

1           A       Have I spoken to anybody?

2           Q       Yes.

3           A       Yes.

4           Q       Who?

5           A       Well, our attorney.

6           Q       Okay. Who, which attorney?

7           A       The gentlemen who are on the phone.

8           Q       Okay. Anyone else besides them?

9           A       The gentlemen who are on the phone.

10          Q       Okay. Anyone else besides the gentlemen who

11 are on the phone?

12          A       No.

13          Q       Did you speak with any other fellow or

14 current board members about giving a deposition in this

15 case?

16          A       No, I haven't.

17          Q       Do you have any discussions with Mr. Tardiss

18 at all? Tardiff, excuse me.

19               MR. ANNUNZIATA: Tardiff, yeah.

20               THE WITNESS: About the deposition?

21               MR. BEHREN: Yes.

22               THE WITNESS: No.

23 BY MR. BEHREN:

24          Q       Okay. Have you had any discussions with

25 anybody on the board, without the presence of counsel,

1 relating to these trademark applications or Mr. Marino's  
2 opposition to the trademark applications?

3 A Well, we just know that it-- that it's in  
4 the litigation.

5 Q Okay. What do you know about it?

6 A Well, I know that -- what I know about it  
7 is -- basically is that we are opposing -- we're --  
8 we're trying to assert our rights to the ownership of  
9 the Laguna Lakes logo.

10 Q And the name?

11 A Well, that's the name, Laguna Lakes.

12 Q Well, it's --

13 A Yeah.

14 Q -- there's a -- no, you have an application  
15 for a logo --

16 A Well --

17 Q -- and a name.

18 A Well, it's -- they're -- yes, I consider  
19 them to be together.

20 Q So, you claim -- you want to try to claim  
21 ownership of the logo and the name Laguna Lakes?

22 A Yes.

23 Q Okay. Are you aware that there's other  
24 developments out there in the United States that are  
25 using the same name, Laguna Lakes?

1           A       No.

2           Q       Do you think that somehow you guys get to  
3 trump them, as far as keeping them from using the name  
4 Laguna Lakes?

5           A       In other states?

6           Q       Yeah.

7           A       Well, I have no -- no -- I -- I would not  
8 know that.

9           Q       And actually -- who actually owns the logo  
10 and the name?

11          A       I don't know. I presume it's the  
12 association, because the association is responsible and  
13 has ownership of the other properties.

14          Q       So, you presume that the association is the  
15 owner of the name and the logo, but you have no actual  
16 documentation or knowledge to support that; it's just  
17 speculation on your part?

18          A       Well, I wouldn't call it speculation,  
19 considering the fact that it's on the entryway, and it's  
20 called Laguna Lakes Community Association, and the  
21 association manages the property, and the property owns  
22 the logo.

23          Q       How do you know the property owns the logo?

24          A       Well, how do you know it doesn't?

25          Q       I'm asking -- I'm not the one asking the --

1 I'm not the one answering questions today, you are,  
2 so --

3 A Well, I don't --

4 Q -- the question is, how do you know -- since  
5 you made the statement, the conclusory statement, that  
6 the property -- the association owns the logo based --

7 A Because --

8 Q -- what do you base that upon?

9 A Based it on the fact that -- that the  
10 declarations say that the board has a fiduciary  
11 responsibility to the properties, and the property has  
12 always been called Laguna Lakes Community -- you know,  
13 Laguna Lakes Community, and therefore it would be  
14 presumed that we do own it.

15 Q Okay. Where does the declaration indicate  
16 somehow -- where in the declaration does it bestow  
17 ownership of the logo and the name upon Laguna Lakes?

18 A Well, I guess I would have to look at the  
19 declarations.

20 Q Isn't it true the declaration doesn't even  
21 refer to the logo?

22 A I don't know that.

23 Q Isn't it true the declaration doesn't have  
24 the logo anywhere in it?

25 A I don't know that, but I do know that the



1 property manual that was given to me, that has the  
2 declarations in it, has a cover sheet that shows the  
3 name Laguna Lakes and the logo.

4 Q Right. And the name Laguna Lakes and the  
5 logo, that would have been from Transeastern, correct?

6 A It would be from whoever gave it to me at  
7 the time we purchased.

8 Q Transeastern is the one who owned the name  
9 and the logo, correct?

10 UNIDENTIFIED SPEAKER: Objection.

11 Go ahead, Bob, though, and answer it, if you  
12 know.

13 THE WITNESS: I can't answer.

14 MR. BEHREN: I'm sorry?

15 THE WITNESS: I said I can't answer that.

16 BY MR. BEHREN:

17 Q So, you don't know? You don't know whether  
18 Transeastern owned the name or the logo?

19 A No, I don't.

20 Q You would agree, though, that Transeastern  
21 used the name and the logo all over its marketing  
22 materials and correspondence and everything else that  
23 they used when they sold you the property, correct?

24 A Yes, that's right.

25 Q And you would agree that the association

1 didn't develop this Laguna Lakes logo, correct?

2 A That they did not develop it?

3 Q Yeah. The association didn't create this  
4 logo, did they?

5 A Well, it must have come along when  
6 Transeastern transferred all of the assets to the  
7 association.

8 Q Okay. Well, first let's back up.

9 So, Transeastern, you agree, is the one that  
10 owned the logo and the name, correct?

11 A No, I -- I -- I don't know that.

12 Q Okay. So, what makes you say -- well, first  
13 of all, how would Laguna Lakes -- how would Transeastern  
14 have transferred the name and the logo if they didn't  
15 own it?

16 A Well, maybe -- I don't know that.

17 Q Okay. So, you don't know if Transeastern  
18 owned it.

19 And you don't know that Transeastern  
20 transferred the name or the logo over to the  
21 association, do you? Again, this is all speculation on  
22 your part, correct?

23 A I don't know the answer to that.

24 Q You don't know if it's speculation on your  
25 part?

1           A       No, because I would think that we do own it,  
2 because it has been used on the documents that I  
3 received when we purchased the property, and it's used  
4 on the entryway to the community. So, how could you  
5 assume otherwise?

6           Q       Well, isn't it true that Transeastern was  
7 using it on all of its materials?

8           A       Yes, that's right.

9           Q       And it was using the name and the logo --

10          A       Uh-huh.

11          Q       -- up through 2006, when they finally  
12 stopped selling new properties, correct?

13          A       Well, yes, but maybe that's a good reason to  
14 assume that they did own it, if they were using it.

15          Q       Right.

16                   And they -- and they also owned the domain  
17 name LagunaLakes.com, didn't they?

18          A       Well, that I don't know.

19          Q       Okay. Isn't it true that -- you know the  
20 association has a domain name, correct?

21          A       Yes, I know --

22          Q       Do you know what it is?

23          A       No.

24          Q       Do you know, is it LagunaLakes.com?

25          A       I don't -- I'm not -- I'm not a tech guy, so

1 when you talk about domain, I'm not sure what you're  
2 referring to.

3 Q Okay. You would agree, too, that the sole  
4 business of Laguna Lakes Community Association is to  
5 collect assessments and maintain the common areas as set  
6 forth in the declarations, right?

7 A It says we have a fiduciary responsibility  
8 for the management of the -- of the association, which  
9 is the corporation.

10 Q Right, which is to collect the assessments  
11 and manage the common areas as set forth in the  
12 declarations, correct?

13 A That's part of it, yes.

14 Q What else is part of it?

15 A Setting rules.

16 Q Okay. Setting rules with regard to how  
17 people maintain properties within the association,  
18 right?

19 A That, as well as -- there are some issues --  
20 yeah, I would say that's correct.

21 Q Okay. What else -- what else would there  
22 be?

23 A Well, there would be other rules, as far as  
24 taking your garbage cans in.

25 Q Uh-huh.

1           A       There would be other --

2           Q       That's in the declarations, though, isn't  
3 it?

4           A       Pardon me?

5           Q       That would be in the declarations  
6 themselves, though, correct?

7           A       Well, not all the rules would be in the  
8 declaration, because the association has a right to make  
9 rules.

10          Q       Okay. So, are there separate rules out  
11 there somewhere that the association has made outside of  
12 the declaration?

13          A       Well, there probably would be, in the  
14 minutes.

15          Q       Is there some rule that was made up by the  
16 association board that people are not allowed to use the  
17 logo or name Laguna Lakes?

18          A       I don't know that.

19          Q       There isn't, is there?

20          A       No, I said I don't know that.

21          Q       Okay. You're not aware of any rule, though?

22          A       I said I don't know that.

23          Q       Again, so you're not aware of any rule?

24          A       I said I don't know that.

25          Q       You don't know of any rule that's out there?

1           A           I said I don't know that.

2           Q           Well, you're going to have to explain  
3 what -- what you mean by you don't know that if --

4           A           Well, there could be, at -- at some point  
5 there could have been that I would have not -- I would  
6 have no knowledge of.

7           Q           That's what I'm saying, you have no  
8 knowledge of any of those rules?

9           A           As I'm saying, as I've said to you, I just  
10 answered your question.

11          Q           What interstate commerce that you're aware  
12 of is Laguna Lakes engaging in?

13                   UNIDENTIFIED SPEAKER:  Objection.

14                   But go ahead, Bob, and answer, if you know.

15                   THE WITNESS:  I don't know of any interstate  
16 commerce that is -- that it's engaged in.

17 BY MR. BEHREN:

18          Q           And with regard to this -- why is it that  
19 the Laguna association decided to seek or submit a  
20 trademark application for the name Laguna Lakes and the  
21 logo?

22          A           Because it was being used by Mr. Marino.

23          Q           Okay.  And what -- what was wrong with  
24 Mr. Marino using the name and the logo?

25          A           Because it is a -- it is obviously -- was

1 created for the community association. It was --

2 Q How do you know -- how do you know that?

3 The community association didn't create the logo, did  
4 they?

5 A Well, they didn't create it for Mr. --  
6 Mr. Marino.

7 MR. BEHREN: Sorry, just one second.

8 (Off-the-record discussion.)

9 MR. BEHREN: Go ahead.

10 Can you read back the last question and  
11 answer, please?

12 (Portion of the record read back by the  
13 court reporter.)

14 BY MR. BEHREN:

15 Q Okay. You don't know why they created it,  
16 do you?

17 A Oh, yes. I -- I would think that that's a  
18 simple business question and that most business people  
19 would understand that when you create a logo, you're  
20 trying to create a value, you're trying to create an  
21 image. You're trying to create a value to what you're  
22 selling. And that's exactly the reason why we are  
23 protecting the logo, because we feel it has a value, it  
24 creates an image for the people who own property within  
25 the community, and it adds value to say that you live in

1 Laguna Lakes.

2 Q You're not selling anything?

3 A Oh, yes, we are selling -- we're -- we're  
4 trying to maintain the value of the property for the  
5 people who have bought into it.

6 Q So, you're not selling anything, are you?

7 A What do you mean selling anything?

8 Q You're not -- the community -- the Laguna  
9 Lakes Community Association is not selling anything, are  
10 they?

11 A As far as -- as what?

12 Q They are not selling anything?

13 A You mean we are not selling property?

14 Q They are not selling anything, period,  
15 correct?

16 A Well, what does that have to do with it?

17 Q Is Laguna Lakes Community Association  
18 selling anything or not?

19 A We don't sell any -- we don't sell any  
20 property.

21 Q You don't sell anything, do you?

22 A Yeah, we -- we sell candy bars and we sell  
23 soft drinks at our --

24 Q Okay.

25 A -- at our clubhouse.



1           Q       Okay. Anything else besides candy bars and  
2 soft drinks in the clubhouse?

3           A       Yeah, popcorn, water. Yeah, that's --  
4 that's about it.

5           Q       Okay. And so -- and how is it that  
6 Mr. Marino was -- is damaging the association by using  
7 the name and logo?

8           A       Well, it's -- it is a matter of this:  
9 That -- that we need to have the -- we need the logo,  
10 and we need to have a clear ownership of the logo,  
11 because, as Mr. Marino is using it, somebody else may  
12 come along and use it. It could be Joe's Plumbing  
13 Company, Mr. Plumber of Laguna Lakes. It could be  
14 Mr. Electrician of Laguna Lakes. It could be, you know,  
15 Mr. Bug Control of Laguna Lakes. And so that -- we  
16 can't control those people who use the name, those  
17 people who use the name, and therefore what image they  
18 would -- how they -- how they would hurt the image of  
19 Laguna Lakes Community Association.

20          Q       Okay. But, as far as you know, Mr. Marino  
21 hasn't been harming the image of Laguna Lakes Community  
22 Association, has he?

23          A       I don't know.

24          Q       As far as you know, you don't -- you're not  
25 aware of any damage he's caused to the association, are

1    you?

2           A       No, I'm not, but, of course, it's like any  
3   other business.  Businesses get into business deals, and  
4   to have a -- to have Mr. Plumber of Laguna Lakes  
5   possibly having -- doing business at Laguna Lakes with  
6   that name and gets into a conflict with one of the  
7   property owners over a plumbing issue and Mr. Plumber  
8   gets sued, presumably they could sue also the  
9   association, because the association permitted that name  
10  to be used for Mr. Joe Plumber.

11          Q       So, is it your position that no one's going  
12  to be able to use the name Laguna Lakes if you guys  
13  trademark it?

14          A       It's my position that we use it for the  
15  community association.

16          Q       So, the question is, does that mean that no  
17  one else is allowed to use the name Laguna Lakes?

18          A       Well, it -- it is the -- it is our  
19  property --

20          Q       Okay.

21          A       -- to be used as it is right now, as a  
22  designation for the -- for the community --

23          Q       Okay.

24          A       -- for the community.

25          Q       Parcel associations, they use the name and

1 the logo, right?

2 A Yes, because they are part of the  
3 association.

4 Q Okay. But -- so, you haven't asked them to  
5 stop using the name and the logo, correct?

6 A That's right, because the association,  
7 they're -- they're a part of the association, they are a  
8 parcel.

9 Q And sometime in 2011 you had a --  
10 discussions with Mr. Marino about his use of the name  
11 and the logo, correct?

12 A Uh-huh.

13 Q Went by his house, right?

14 A Uh-huh.

15 Q You had a -- your big dog with you, correct?

16 A That's right.

17 Q And he was barking at Mr. Marino, right?

18 A Well, I don't know that he was barking at  
19 Mr. Marino.

20 Q But he was protecting you, right?

21 A I don't recall that.

22 Q Okay. And -- and at that time you told him,  
23 you shouldn't be using the name and the logo anymore  
24 because it's trademarked, right?

25 A I don't know if those were my exact words,

1 but I did say that if he was using the name Laguna Lakes  
2 and our logo, and that was a logo for the -- for the  
3 community.

4 Q You told him it was trademarked, right?

5 A I don't recall that I used -- said it was  
6 trademarked --

7 Q Okay.

8 A -- because at that time I wouldn't have  
9 known that.

10 Q What was Mr. Marino's response?

11 A He said he knew a lot about trademarking,  
12 and that he knew that he -- what he was doing was all  
13 right.

14 Q And that it wasn't -- that what you claimed  
15 to have been trademarked wasn't trademarked, correct?

16 A Well, I don't exactly remember his exact  
17 words.

18 Q Okay. So, that -- what happened -- and then  
19 at some point in time, you guys at -- on the association  
20 board decided to trademark the -- try to trademark the  
21 name and the logo, correct?

22 A Yes.

23 Q What was discussed at those meetings?

24 UNIDENTIFIED SPEAKER: Objection.

25 And I just want to caution the witness,

1           the -- any -- any discussions at a private board  
2           meeting with the attorney are privileged and we  
3           shouldn't talk about those, but if there were  
4           discussions in a public meeting, then we can talk  
5           about the substance of those public conversations.  
6           Do you understand the distinction?

7           THE WITNESS:   Yes, I do.

8           UNIDENTIFIED SPEAKER:   Okay.   You can go  
9           ahead and answer, to the extent you can.

10          THE WITNESS:   What was the question?   Say it  
11          again.

12          MR. BEHREN:    I'm sorry?

13          THE WITNESS:   What was the question again?

14          MR. BEHREN:    Can you read back the question,  
15          please?

16                 (Portion of the record read back by the  
17   court reporter.)

18          THE WITNESS:   That's a hard question to  
19          answer, because I don't know if that was in public  
20          discussion or if that was in private discussion  
21          with our attorney.   We'd really have to look at  
22          previous minutes to determine whether or not that  
23          was public.   I don't know.

24   BY MR. BEHREN:

25          Q           So, you don't know whether it was publicly

1 discussed. Well, there was -- there was definitely  
2 discussions about the trademark at the -- one meeting  
3 where it was voted upon by Ms. Cowart to apply for those  
4 trademarks, correct?

5 A Well, that would be the case, that -- that  
6 that would have appeared in the -- in the minutes, yes.

7 Q What other public discussions were there  
8 about the trademark?

9 A That I don't recall.

10 Q Why is it that you all chose to use  
11 Ms. Flammang for this trademark?

12 A Why did we what?

13 Q Why is it you chose to use Ms. Flammang to  
14 seek this trademark when she was a board member?

15 A Well, I think that that would be privileged.

16 Q Guess what, you don't get to assert  
17 privilege.

18 A Oh, I don't?

19 Q No.

20 THE WITNESS: Okay. Well, then, I'm going  
21 to ask my attorney, do I have to answer that  
22 question?

23 MR. ANNUNZIATA: Ask Scott.

24 MR. HARDERS: If the question is why did we  
25 select attorney Flammang to file for the trademark

1 applications, if you know, you can -- you can  
2 answer that, but you shouldn't talk about any of  
3 the discussions between the board, or individuals  
4 on the board, and the attorney about the  
5 applications.

6 THE WITNESS: Yeah.

7 Because she -- to answer that question,  
8 because she is an attorney and she would -- would  
9 help provide us with some direction.

10 BY MR. BEHREN:

11 Q Did Ms. Flammang counsel you guys about the  
12 process and the procedures for filing the federal  
13 trademarks?

14 MR. ANNUNZIATA: I think it's an objection.  
15 Attorney/client privilege.

16 BY MR. BEHREN:

17 Q At public meetings, did Ms. Flammang counsel  
18 you guys about the process for filing the federal  
19 trademarks?

20 A At the meeting?

21 Q Yeah.

22 A I don't recall.

23 MR. ANNUNZIATA: Qualified as a public  
24 meeting, at a public meeting, did she counsel you  
25 guys?

1 BY MR. BEHREN:

2 Q Did Ms. Flammang ever discuss with you guys  
3 at any public meetings whether or not you needed to be  
4 the owners or creators of the logo and the name in order  
5 to trademark it?

6 A You know, we are going to have to go back to  
7 the minutes. I just don't recall.

8 Q Did Ms. Flammang ever discuss with you at  
9 public meetings that it is a -- potentially a criminal  
10 offense to file false information in a trademark  
11 application?

12 A I don't ever recall that at all.

13 Q Did Ms. Flammang ever discuss with you at  
14 any public meetings what the obligation would be of the  
15 board in order to maintain the trademark if there's  
16 other developments and persons around the country using  
17 the name?

18 A I have no recollection of that.

19 Q Did she ever tell you that maybe if there  
20 was other people out there using the name and you  
21 trademarked it, that you could be waiving your trademark  
22 rights? Was that ever discussed?

23 UNIDENTIFIED SPEAKER: Objection.

24 I just would clarify that that -- that if  
25 this conversation happened in a public meeting,



1           then it's okay to answer; but if it was private,  
2           please don't.

3                   THE WITNESS:  I -- I just don't recall.

4  BY MR. BEHREN:

5           Q       On that particular motion to trademark the  
6  name and the logo, why did you second that motion?

7           A       Well, if it shows that I seconded the  
8  motion -- if there was a motion -- what was the motion?

9           Q       The motion was to trademark the logo and the  
10 name.

11          A       Okay.

12          Q       The motion was made by Ms. Cowart.

13          A       Okay.  And so your question is why did I  
14 second it?

15          Q       Yes.

16          A       Because I agreed with it.

17          Q       Okay.  Why?

18          A       Well, because -- why?

19          Q       Yeah.

20          A       Well, because I did.

21          Q       Okay.  Well, why?

22          A       Why?  Because I felt that the trademark  
23 should be ours, it should belong -- belong to the  
24 association and should be only used when given  
25 permission or when it -- or if it be licensed.

1           Q       Do you know when it was that the association  
2 first started using the name and the logo?

3           A       Well, I wouldn't know when it first started  
4 using it, I would only know in 2004, when -- when I was  
5 looking at the purchase of the property, to have seen  
6 the logo and the trademark.

7           Q       Okay. Well, when you saw the logo and the  
8 trademark with regard to the purchase of the property --

9           A       Yeah.

10          Q       -- you saw the logo and the trademark where?

11          A       Probably -- well, I -- you know, I can't  
12 tell you. Probably on some of their sales literature.  
13 And that was -- that would have been December of 2004.

14          Q       On Transeastern sales literature, correct?

15          A       Well, whosever sales literature it was.

16          Q       Well, you didn't buy your unit from the  
17 community association, did you?

18          A       No, I just -- I said to you earlier that we  
19 brought it from Transeastern.

20          Q       Right. One of the Transeastern entities,  
21 correct?

22          A       Yeah.

23          Q       Well, you don't know the difference between  
24 Transeastern Laguna Lakes, LLC or Transeastern Homes,  
25 LLC, do you?

1           A           I -- I wouldn't know that -- at that time,  
2   it was not clear. My understanding, we were buying it  
3   from Transeastern.

4           Q           And -- is there a paper clip?

5                       (Off-the-record discussion.)

6   BY MR. BEHREN:

7           Q           Let me show you exhibits G and I.

8           A           Yep.

9           Q           These are the applications for the  
10  trademarks for the logo and the name.

11          A           Uh-huh, yeah.

12          Q           You recognize those?

13          A           I probably -- if these were -- I believe  
14  that these may have been made available to us at the  
15  time that we were -- you know, that the trademark was  
16  being -- that the application was being made, but it's  
17  been a long time and I just don't recall these  
18  specifically.

19                       The ones with the -- this color on them, I  
20  don't recall that.

21                       And the other document, you're saying is  
22  the -- these two? Well, this, I believe, was on the  
23  cover of the book that I received, with the documents.  
24  And, of course, this is a picture of the -- our  
25  entryway, which shows the name and the logo.

1           Q       That's a picture actually -- that picture  
2 actually is the website home page for the association,  
3 correct?

4           A       I would have to go back and look at it.

5           Q       Well, look at it. Look at the side there.

6           A       Yeah.

7                   Oh, if that's what -- if that's what it  
8 says, yeah, then that's what it is.

9           Q       Okay. So, that's what was used as the  
10 specimen here on that particular application, right?

11                   But you don't know when actually that  
12 website was created, do you?

13          A       No, I don't.

14          Q       Okay. The question is, did you see this  
15 application before it was submitted to the trademark  
16 office?

17          A       I don't recall.

18          Q       Okay. This other application, Exhibit I,  
19 did you see that application before it was submitted to  
20 the trademark office?

21          A       Let's see.

22                   If it was provided to us as board members, I  
23 would have seen it. I don't recall it right now. I  
24 don't recall the document right now.

25          Q       All right.

1           A           What was the date of the submission on that?

2           Q           The applications were in August of 2011 --

3           A           Yeah, that's --

4           Q           -- and September 2011.

5           A           Yeah. That would have been a pretty long  
6 time ago, that's why I'm not recalling that.

7                   MR. BEHREN: All right. Hold on. Let me  
8 speak with you for a second, Gerard.

9                   (A brief recess was taken.)

10 BY MR. BEHREN:

11           Q           Are you aware of anybody at some --  
12 expressing to you confusion about Gerard Marino's  
13 affiliation with the Laguna Lakes Community Association?

14           A           No.

15                   MR. MARINO: How about the other way around;  
16 anybody ever ask them to buy real estate?

17 BY MR. BEHREN:

18           Q           Anybody ever ask the association, or you, as  
19 a member of the association, to buy real estate?

20           A           To ask --

21           Q           Has anybody ever asked you, as a member of  
22 the association, to buy real estate from you in Laguna  
23 Lakes?

24                   MR. MARINO: I think you meant --

25                   MR. BEHREN: Stop.

1                   MR. MARINO: I know, I don't know how else  
2           to do it.

3                   (Off-the-record discussion.)

4                   THE WITNESS: Say that one more time.

5                   MR. BEHREN: Would you read back that  
6           question, please?

7                   (Portion of the record read back by the  
8   court reporter.)

9                   THE WITNESS: Say it again one more time.

10                   (Portion of the record read back by the  
11   court reporter.)

12                   THE WITNESS: No.

13                   MR. MARINO: Scott, can I see you outside  
14           for a second?

15                   (A brief recess was taken.)

16   BY MR. BEHREN:

17           Q       Do you know how much has been expended so  
18   far by the association on prosecuting the application of  
19   these trademarks?

20           A       Yeah, it's been around \$10,000.

21           Q       Do you think that this has been in the best  
22   interests of the association, to continue to try to  
23   prosecute ownership of the name and the logo?

24           A       Yes, because it has intrinsic value.

25           Q       Haven't association members complained about

1 this folly?

2 MR. ANNUNZIATA: Objection to that  
3 characterization of what this proceeding --

4 MR. BEHREN: Wait a minute.

5 MR. ANNUNZIATA: -- what these legal  
6 proceedings are.

7 MR. BEHREN: Again, now, we have one --  
8 there's one lawyer making objections, that's  
9 Mr. Harders on the phone.

10 MR. ANNUNZIATA: Well, I'm an attorney.  
11 I'm -- I'm -- I'm -- I don't know that he heard  
12 the word folly, so I'm just, for the record,  
13 saying I don't --

14 UNIDENTIFIED SPEAKER: Characterizing this  
15 deposition?

16 MR. ANNUNZIATA: The whole proceedings, this  
17 folly, he called it.

18 Repeat the question back, please, for  
19 Mr. Harder, so he can hear it, as loudly as you  
20 can, please.

21 (Portion of the record read back by the  
22 court reporter.)

23 MR. HARDERS: Okay. Yeah, objection.

24 But, Bob, you can go ahead and answer to the  
25 extent you can do it.

1                   THE WITNESS: I think we had a question at a  
2           board meeting -- a question at a board meeting  
3           about the expenditure.

4 BY MR. BEHREN:

5           Q       And what was the response?

6           A       Well, the response was, is it was -- it's an  
7   asset of the corporation that we are going to protect as  
8   a fiduciary responsibility --

9           Q       And isn't there --

10          A       -- that we have.

11          Q       And isn't there also -- hasn't there also  
12   been complaints about the fact that Mrs. Flammang, a  
13   board member, was being used as the lawyer to do this?

14          A       I don't -- I don't know that that -- are you  
15   talking about at a board meeting?

16          Q       Yeah. Did people complain, homeowners,  
17   complain about the fact that Ms. Flammang, a board  
18   member, was being used for this trademark?

19          A       That I don't recall either. There may -- if  
20   there was, it should show up -- possibly would show up  
21   in the minutes.

22          Q       Well, the problem is that I haven't been  
23   produced the minutes, so -- even though we asked for  
24   them, we didn't get anything other than one of --  
25   actually, we didn't even get one of them, I don't think.



1 MR. HARDERS: Objection to the --

2 MR. BEHREN: I'm sorry?

3 THE COURT REPORTER: I'm sorry?

4 MR. HARDERS: Just objection to the -- I  
5 mean, to the --

6 BY MR. BEHREN:

7 Q You would agree that --

8 MR. ANNUNZIATA: Wait, wait, wait, wait,  
9 wait. Scott Harders was in the middle of an  
10 objection.

11 MR. BEHREN: Go ahead.

12 MR. ANNUNZIATA: Please finish your  
13 objection, Scott.

14 MR. HARDERS: Just to the -- to the -- to  
15 the sidebar discussion that counsel is having. If  
16 we can get the questions out, which I understand  
17 he is about to do, that would be great.

18 BY MR. BEHREN:

19 Q I'm assuming that the association has copies  
20 of all of their minutes, meeting minutes, for the  
21 past -- since -- certainly since 2011 forward, correct?

22 A Yes.

23 Q And those should supposedly address some of  
24 these trademark issues that may have been discussed at  
25 meetings, right?

1           A       Yes, that -- that would be in -- that you  
2 were talking about, when their motions are made,  
3 certainly.

4           Q       Any idea why they weren't given to us?

5           A       I have no idea that you requested --

6           Q       Any idea why they are not on the website?

7           A       No. I mean, they are available -- they are  
8 available as part of the documents that we have as a --  
9 of -- for our meetings, through the community, through  
10 the management company.

11                   MR. BEHREN: All right. I don't have  
12 anything further.

13                   Does he want to read or waive?

14                   MR. HARDERS: I would just like to add a  
15 couple things to the record, if we could, before  
16 that.

17                   Okay. Just I -- I would like to identify  
18 Mr. Hajicek's deposition testimony and  
19 Mr. Tardiff's deposition testimony as highly  
20 confidential under the board's standard protective  
21 order, which is applicable to this and all cases.

22                   MR. BEHREN: Well, I don't know that I'm  
23 going to agree to that. I would have to look into  
24 the issue, so we'll have to --

25                   MR. HARDERS: Well, you don't -- you don't

1       have to agree. If one party, you know, asks for  
2       it, it happens until it's undone. So, you can  
3       look into it and petition the board to have it  
4       undone, but I would like these two depositions  
5       marked highly confidential, just due to the  
6       sensitive nature of the board operations that were  
7       discussed on -- in those two particular.

8               And that's -- that's all I have got. We can  
9       discuss the preliminary -- or the -- the details  
10      now.

11             And we -- and we'll read. Mr. Hajicek will  
12      read as well.

13             MR. BEHREN: He'll read.

14             And, Chad, you need to make a -- you need to  
15      let me know when on Monday we can set up a time to  
16      call George, and hopefully -- I'm not going to  
17      expect it now, it's already 5:30, but at some  
18      point over the weekend, you can respond to my  
19      e-mail relating to the discovery. I think my  
20      request for admissions -- the request for  
21      admissions that you all didn't respond to, I  
22      think --

23             MR. ROTHSCHILD: Objection. We did respond,  
24      objected, which is entirely --

25             MR. BEHREN: Chad, can you let me finish

1 speaking, please?

2 MR. ROTHSCHILD: No, I want to --

3 MR. BEHREN: No, no, no. You can -- you can  
4 make whatever objection you want and you can --  
5 you can pound on your chest all you like after I'm  
6 done talking, okay?

7 MR. ROTHSCHILD: Fair enough.

8 MR. BEHREN: Number one, with regard to the  
9 requests for admissions, which I don't think were  
10 fully responsive, I don't know that we really need  
11 to go forward on motions to compel on those,  
12 because I asked the corporate rep pretty much  
13 about all of the ones that I wanted answers to,  
14 and he answered most of them; all right?

15 The interrogatories also, I don't know that  
16 there's a lot of information.

17 The request for production, there are  
18 documents that we are clearly entitled to that we  
19 didn't get; for instance, minute meetings,  
20 minutes -- you know, minutes of these board  
21 meetings, we didn't get one from you guys, even  
22 though, as you said, you were going to produce  
23 them. So, there's a bunch of documents that you  
24 said you were going to produce that you didn't  
25 produce. There's a bunch of documents that you

1       said you were going to produce that your corporate  
2       representative said you don't have. So, if you  
3       want to amend to indicate that you don't have  
4       responsive documents, that would be fine also; all  
5       right?

6               And then finally, the --

7               MR. ROTHSCHILD: I --

8               MR. BEHREN: Wait. Hold on a second.

9               And the other issue I want to address then  
10       also with George on Monday is the fact that your  
11       corporate representative did not have knowledge of  
12       all the areas that he was supposed to have had  
13       knowledge of, and I'm going to reask again to  
14       depose Ms. Flammang, in accordance with this prior  
15       ruling.

16              MR. ROTHSCHILD: Are you finished?

17              MR. BEHREN: What's that?

18              MR. ROTHSCHILD: Are you finished?

19              MR. BEHREN: Yeah.

20              MR. ROTHSCHILD: Okay. There's a couple  
21       things.

22              I was not even (inaudible) request for  
23       admissions --

24              (Off-the-record discussion.)

25              MR. ROTHSCHILD: This is Chad Rothschild.

1           I'm looking at Exhibit F, the board meeting  
2           minutes, which it looks like the agenda was  
3           prepared by Alliant Association Management, who is  
4           not a party to this, you know, opposition  
5           proceeding. To my knowledge, I'm not sure if the  
6           community association as an entity has physical  
7           copies of the meeting minutes or whether that's  
8           something that Alliant puts up. As far as I am  
9           aware, we have produced all responsive documents.

10           MR. BEHREN: Chad, you produced zero meeting  
11           minutes, and your association president and  
12           corporate representative said that you guys have  
13           them and --

14           MR. ROTHSCHILD: Well, what --

15           MR. BEHREN: -- that they are available for  
16           production and --

17           MR. ANNUNZIATA: Wait, wait, wait, wait,  
18           wait --

19           MR. BEHREN: -- that they should have been  
20           posted on the website, but they are not.

21           MR. ANNUNZIATA: I'm going to interrupt this  
22           real quick.

23           Can we release the witness?

24           MR. BEHREN: Yes.

25           MR. ANNUNZIATA: Okay. You're free. We are

1           going to have a fight with lawyers, okay, so  
2           you're free to go.

3           THE WITNESS:   Okay.

4           MR. ANNUNZIATA:  Thank you, sir.

5           THE WITNESS:  Oh, you're welcome.

6           MR. ROTHSCHILD:  We'll look for them.  If we  
7           have copies of them --

8           MR. BEHREN:  Your -- your representative  
9           already said you have them.  He said they should  
10          have been attached to the website, and he doesn't  
11          know why they're not.

12          MR. ROTHSCHILD:  Okay.

13          MR. ANNUNZIATA:  But it doesn't mean they  
14          don't exist.

15          (Off-the-record discussion.)

16          MR. BEHREN:  So, like I said, Chad, I think  
17          that a good number of the issues for discovery can  
18          be resolved, but I would like to have my  
19          conference call with George on Monday, so --

20          MR. ROTHSCHILD:  Back to take a look at your  
21          concerns.  Obviously, we haven't had a chance to  
22          look at them in detail --

23          MR. ANNUNZIATA:  Why is this on the record?

24          MR. ROTHSCHILD:  -- until now --

25          MR. BEHREN:  Because I don't want George

1       accusing me of not trying to address these issues  
2       in good faith with opposing counsel, since --

3               MR. ROTHSCCHILD:   And --

4               MR. BEHREN:   -- since that's what opposing  
5       counsel wants to keep on arguing every time that I  
6       file a motion to compel, that I haven't tried to  
7       work them out in good faith.

8               MR. ROTHSCCHILD:   Since we are on the record,  
9       I think the only good faith effort he made was on  
10      Thursday, when he did finally send us some narrow  
11      responses.   Until then, you said all of our  
12      responses were deficient, which is, in our  
13      opinion -- in my opinion, not a good faith effort.  
14      And I think the board agreed with that.   That  
15      said, we will do our best to address the concerns  
16      you raised in the Word document you sent us on  
17      Thursday.

18              MR. BEHREN:   Well, like I said, I need to  
19      know -- you need to let me know over the weekend  
20      by e-mail, and I want a time on Monday when we can  
21      call George.

22              MR. ROTHSCCHILD:   And on the record, I would  
23      just like to add we have requested the notes from  
24      Mr. Behren.

25              MR. BEHREN:   The notes are -- the notes are



1           privileged. The notes were communications with me  
2           and annotations of documents for me.

3           MR. ROTHSCHILD: A note --

4           MR. BEHREN: That's all he has.

5           MR. ROTHSCHILD: A note that Mr. Behren said  
6           he refused prior to the deposition.

7           MR. BEHREN: That's the notes I'm talking  
8           about. They are privileged. They were  
9           annotations to documents that he prepared for me.  
10          I asked -- I asked him about the notes. He  
11          doesn't have separate personal notes.

12          MR. HARDERS: Okay. Well, I mean, you have  
13          asked us for a privilege log on some things that I  
14          expect we can expect the same response from you.

15          MR. BEHREN: That's fine.

16          MR. HARDERS: Okay.

17          (Deposition concluded.)

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DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES

RE: Marino vs. Laguna Lakes

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Under the penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true.

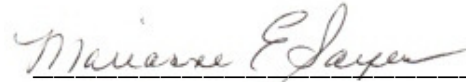
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CERTIFICATE OF OATH

I, Marianne E. Sayers, RPR, CRR, Notary Public,  
State of Florida at Large, certify that the witness  
ROBERT ALLEN HAJICEK personally appeared before me on  
August 23, 2013 and was/were duly sworn.

(This certificate has been digitally signed.)



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Marianne E. Sayers, RPR, CRR,  
Notary Public, State of Florida  
Commission DD942088  
Commission Expires 1/19/2014

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## CERTIFICATE OF REPORTER

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STATE OF FLORIDA)

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COUNTY OF LEE)

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I, Marianne E. Sayers, RPR, CRR, do hereby certify that I was authorized to and did stenographically report the deposition of ROBERT ALLEN HAJICEK; that a review of the transcript was requested; and that the transcript is a true and complete record of my stenographic notes.

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I FURTHER CERTIFY that I am not a relative, employee, or attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

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DATED this 9th day of September, 2013.

(This certificate has been digitally signed.)

  
Marianne E. Sayers, RPR, CRR